F 33

Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms

October 1989

Task Force on Felon Identification in Firearm Sales

Assistant Attorney General
Office of Justice Programs
Chairman

Bureau of Alcohol, Tobacco and Firearms
Bureau of Justice Assistance
Bureau of Justice Statistics
Federal Bureau of Investigation
Immigration and Naturalization Service
National Institute of Justice
U.S. Marshals Service

J 1.96:

READEX FICHE best copy available

Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms

October 1989

Task Force on Felon Identification in Firearm Sales

Assistant Attorney General
Office of Justice Programs
Chairman

Bureau of Alcohol, Tobacco and Firearms
Bureau of Justice Assistance
Bureau of Justice Statistics
Federal Bureau of Investigation
Immigration and Naturalization Service
National Institute of Justice
U.S. Marshals Service

Foreword

The Attorney General is required under Section 6213 of the Anti-Drug Abuse Act of 1988 to report to Congress by 18 November 1989 on a system for the immediate and accurate identification of felons who attempt to purchase firearms. Pursuant to this mandate, the Attorney General requested that the Assistant Attorney General for the Office of Justice Programs (OJP) establish a Task Force on Felon Identification in Firearm Sales to develop a range of options that would comport with the statute.

After preliminary research by components of the Departments of Justice and Treasury, the Task Force held its first meeting on 14 March. I cannot overstate my appreciation for the superlative efforts of all of the Task Force representatives, especially the staff of OJP's Bureau of Justice Statistics (BJS), which coordinated production of this Report. Under the direction of Dr. Joseph M. Bessette, BJS staff invested considerable talent and expertise, and many evenings and weekends, to produce this document.

The goal of the Task Force was to identify the entire range of issues that ought to be considered before implementing a felon identification system. The Task Force published its draft report on 26 June 1989 in the *Federal Register* for a thirty-day public comment period. We were pleased to receive more than one hundred comments from members of Congress, State and local officials, public interest groups, and private citizens. A broad range of views was presented. One law enforcement group, the Police Executive Research Forum, conducted a survey of its members on the options. The comments not only assisted the Task Force in improving the draft report, but will also be of great value to decisionmakers in assessing the strengths and weaknesses of the various options presented. The Task Force was most gratified by the general consensus among commenters that the draft report presented a thorough and objective review of a most complex subject.

President Bush has said that loopholes that "allow deadly weapons to fall into deadly hands" must be closed. The biggest obstacle to achieving this goal is that so many of the guns used in the commission of crimes are obtained on the streets and not through licensed dealers. To deal with the problem of guns used in the commission of crimes, the President has proposed a comprehensive approach, including enhanced penalties for criminals using firearms. The President has also recognized that one barrier to an immediate and accurate felon identification system is incompleteness in criminal history reporting. The President has called upon the Federal, State,

and local governments to provide timely and accurate reporting of arrest and disposition records. Such a reform would have a wide range of beneficial criminal justice applications.

Several commentators on the draft report recognized that improved criminal history records are essential to a viable felon identification system. The National Organization of Black Law Enforcement Executives noted that "the incompleteness of criminal history records is a critical hindrance." The Citizens Committee for the Right to Keep and Bear Arms commented that "the greatest . . . value of this report is the bright light it sheds on the primitive state of the criminal history reporting in the United States."

In Section 6213 of the Anti-Drug Abuse Act, known as the "McCollum Amendment," Congress has recognized the need to develop improved mechanisms to enforce current laws that prohibit felons from obtaining firearms. The goal of immediately identifying felons in the gun shop will be increasingly feasible as the advance of technology continues at its remarkable pace. Developments in computerized criminal history information systems and improvements in Automated Fingerprint Identification Systems (AFIS) have been impressive. It is not the existence of the technology, but rather its costs, the need for trained personnel, and the incompleteness of criminal history records that present the greatest impediments to implementing such systems.

Representative Bill McCollum, a primary author of Section 6213, concluded after reading the Task Force report: "Fingerprint identification by gun dealers is a goal we can achieve . . . [W]e are capable of having an immediate and accurate identification system without interfering with the activities of those Americans who are eligible to purchase firearms."

In this Report the Task Force does not make recommendations or reach conclusions. We are keenly aware of the significant concerns about protecting the privacy interests of all citizens, as well as enhancing the ability of law enforcement authorities to protect society from the criminal element. In addition, we recognize that those who select among the options must be mindful of preserving what Attorney General Dick Thornburgh has called the "historic and honorable firearms tradition in this country."

Although the report focuses on the practical impediments to felon identification, it is in no way intended to minimize the significant legal issues that must be vigorously considered before adoption of any system would be warranted. The Task Force is indebted to several commenters, including the American Civil Liberties Union (ACLU), the Lincoln Legal Foundation, and the Naticnal Rifle Association (NRA) for their legal analyses. First, Second, Fourth, and Fifth Amendment and other constitutional and statutory concerns have been elucidated in the comments received. Several other organizations and individuals expressed particular concern about establishment of any list of firearm owners and the dissemination of arrest information to non-law enforcement personnel.

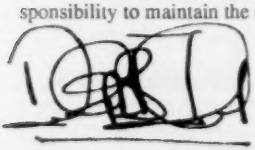
The options contained in this Report fall into two basic categories: those where identification of felons is made at the point of sale versus those involving a preapproval procedure. In both cases, verification of identification would be made in the gun shop. In neither case would a waiting period be required for each purchase of a firearm. We recognize the several thoughtful comments that the Report was either under- or over-inclusive. The Task Force believes, however, that it has taken a broad approach that is consistent with Section 6213 and that provides an appropriately wide array of options for policymakers to consider.

Reliability would be enhanced with prior approval if fingerprint checks are conducted requiring 4-6 weeks. The basic prior approval system, however, is considerably more expensive than the basic point-of-sale system — perhaps two or three times as costly — and raises other significant policy issues as well. It is clear to the Task Force, however, that considerably shorter waiting periods (7 days has been commonly suggested) do not significantly enhance reliability over the point-of-sale systems described herein.

The Report contains options that range from lower-cost systems that minimize the burden placed on firearm purchasers to extremely costly systems that rely upon technology just now becoming available and that raise issues of the type involved in a national identification system. The most elaborate options presented in this report may cost up to $10 billion or more. But less exotic schemes, albeit less than perfect alternatives, are also presented for consideration. They could be implemented in the near term at substantially less cost.

In assessing this Report, it is important to note that there would be shortcomings in any felon identification system. One major effect of a felon identification system may be to discourage felons from direct purchase and to encourage their use of alternative means to obtain prohibited weapons. In a 1986 study for the Department of Justice, it was determined that about five-sixths (84%) of convicted offenders in State prisons who admitted to ownership of firearms claimed to have acquired their weapons from sources other than a retail outlet. Through the use of "straw men" who lack a criminal record, and therefore may be eligible to purchase firearms, some felons may be able to obtain the tools of their deadly trade. In addition, there is an active "black market" in firearms.

Although many of the options may be subject to intense public policy debate, the Task Force has attempted to remain assiduously neutral in preparing a complete and fair description of various alternatives. Each option presented is meant to be flexible and adaptable to numerous modifications. If this objective has been achieved, then the Report can serve as a skeleton onto which decisionmakers may add the details necessary to produce a viable felon identification system. Such a system must preserve legitimate rights to privacy and firearms ownership, while at the same time enhancing the ability of law enforcement to carry out its responsibility to maintain the domestic peace.



Richard B. Abell (Task Force Chairman)
Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice

Acknowledgments

The following individuals served as Task Force members for their agencies: Richard B. Abell, Joseph M. Bessette, Joseph P. Briggs, Edward D. Conroy, Jack D. Kravitz, John B. Pickett, Charles P. Smith, Clifford J. White, and Lawrence York.

The Task Force gratefully acknowledges the following staff for their vital contribution to its deliberations and to the preparation of this report: Bureau of Justice Statistics — S.S. Ashton, Jr., Allen Beck, Lawrence Greenfeld, John Jones, Carol Kaplan, Norma Mancini, Brian Reaves, Benjamin Renshaw, and Bernard Shipley; Bureau of Alcohol, Tobacco and Firearms — Richard Cook and Charles R. Demski; Federal Bureau of Investigation — William H. Garvie, Walter F. Johanningsmeier, James Hoffman, and David T. Mitchell.

The Task Force would also like to thank the members of the "working group" established by the Department of Justice Research and Development Review Board and chaired by the Bureau of Alcohol, Tobacco and Firearms for their preliminary study of this issue prior to the establishment of the Task Force.

The Task Force expresses appreciation to the numerous State and local officials who provided information on current State practices regarding firearm sales in their States, especially William C. Corley, North Carolina; Paul E. Leuba, Maryland; and Lt. R.L. Vass, Virginia. Appreciation is also extended to Robert Belair and Robert Marx of SEARCH Group, Inc. and Thomas Orsagh of Fisher-Orsagh Associates, Inc. for their studies which provided technical and policy-relevant information critical to the work of the Task Force.

Finally, the Task Force would like to express appreciation for the assistance provided by the publications unit of the Bureau of Justice Statistics — Marilyn Marbrook, Yvonne Boston, Marianne Zawitz, and Jeanne Harris — and the following additional personnel of the Office of Justice Programs for their work in reviewing the comments on the draft report and preparing the Appendix to the final report: Walter W. Barbee, Randall Davis, Karen L. Wilson, Bulbul Howard, Tamara Bagley, Eric Wiener, and Sharon Coffee.

Contents

I. Introduction and summary of findings 1

Scope of the problem 3
Key elements of a felon identification system 5
The quality of felony conviction data 8
Impediments to creating a perfect system 12
Practical alternatives 14
Cost estimates 19
Implementation issues 21
Legal and policy issues 23
Solving the problem of felons acquiring firearms 24

II. Options for a felon identification system 25

Section 1. Schematic overview 25
Section 2. Point-of-sale approval systems 28
Option A: Telephone check by gun dealer with secondary verification 28
Option A1: Terminal access by gun dealer to disqualifying information 45
Option A2: Touch-tone telephone access by gun dealer to disqualifying information 47
Option A3: Live scan of fingerprints by gun dealer 48
Option A4: Biometric identification card 51
Section 3. Prior approval systems 53
Option B: Firearm Owner's Identification (FOID) Card 53
Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer 63
Option B2: Smart card containing disqualifying information 66
Section 4. Appeal procedures 67

III. Legal and policy issues 69

A Federal or State system; mandatory or voluntary? 70
Sources of funding for criminal history checks 71
Release of criminal history information to gun dealers 71
The issue of accuracy 73
Creating a data base of firearm purchasers 74
Potential "tracking" of firearm purchasers 75
Issuing documents authorizing firearm purchases 75
The use of biometric data 76

IV. Supplementary materials 77

Section 1. Relevant Federal statutes 77
Section 2. Current practices 80
Federal control of firearms 80
State practices regarding firearm sales 82
Section 3. Access to Federal criminal history records 90
Section 4. Study of other persons ineligible to purchase firearms 94

V. Exhibits 95

1. Felon identification system for firearm sales Schematic overview 96
2. Option A: Telephone check by gun dealer Immediate verification 97
3. Option A: Secondary verification Option B: Prior approval 98
4. National access to criminal history data 99
5. Firearms transaction record, BATF form 4473 100
6. Estimated costs for felon identification options 106
7. States requiring criminal history checks for firearm sales 107
8. Maximum waiting periods required for initial firearm purchase by a State resident 108

VI. Appendix: Summary of comments on the Draft Report 109

Part I. Introduction and summary of findings

The Anti-Drug Abuse Act of 1988 (Section 6213(a) of Public Law 100-690, November 18, 1988) requires the Attorney General, in consultation with the Secretary of the Treasury and other Federal, State, and local law enforcement officials, to "develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of Title 18, United States Code." The Attorney General is further required to make a report to Congress describing such a system no later than 1 year after passage of the Act (November 18, 1989) and to begin implementation of the system 30 days later (December 18, 1989). Finally, the Attorney General is required to conduct a study to determine whether an effective method can be designed to identify other persons prohibited by Federal law from purchasing firearms (Section 6213(c)). Such persons include: fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to any mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have renounced their American citizenship. This second study must be submitted to Congress by May 18, 1990.

This report represents the completion of the first phase of the task to design a system for identifying felons who attempt to purchase firearms. Its purpose is to describe a variety of possible options for such a system. It details the essential elements of each option; cost estimates; the impact of the system on firearm dealers and on local, State, and Federal law enforcement agencies; the strengths and weaknesses of each option; and associated legal and policy issues. The options are organized into two basic types: those that involve some kind of immediate verification at the gun shop of the prospective purchaser's eligibility, and those that document an individual's eligibility to purchase firearms for some specified period of time, such as three years. Although the latter type requires a "waiting period" for the initial background check, it allows for immediate verification that the purchaser is not a convicted felon at the time of subsequent gun purchases. Within each of these categories the options are arrayed from the lower-cost alternatives to higher-technology, more expensive options.

This report does not address the issue of identifying other persons, besides felons, who are ineligible under Federal law from purchasing firearms. The Task Force decided that this parallel activity ought to be initiated by a private contractor with expertise in criminal justice and information systems. In July of this year the Bureau of Justice Statistics contracted with Enforth Corporation of Cambridge, Massachusetts, to carry out this work.

Scope of the problem

The Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury estimates that approximately 7.5 million new and used firearms are sold at the retail level each year in the United States through 270,000 Federally licensed firearm dealers. Currently, those who purchase firearms are required to fill out BATF form 4473 at the dealership attesting that they do not fit into any of the categories of persons ineligible to purchase firearms. These forms include identifying information for the purchaser as well as the type and serial number of any firearms purchased. The forms are kept by the dealer and are subject to inspection later by BATF officials. They may be examined, for example, to try to track down the purchaser of a firearm left at the scene of a crime.

At this time there is no Federal requirement for any checking of the eligibility of the purchaser, either before or after the purchase. The dealer relies primarily on the purchaser's signature attesting to his eligibility. False statements by the purchaser on the BATF form are a Federal felony punishable by a prison term of up to 5 years.

Although the Federal government does not require a criminal history or any other kind of check of firearm purchasers, the States are free to impose their own requirements. Currently, 20 States and the District of Columbia (covering 55% of the Nation's population) stipulate that a pre-purchase criminal history check be made of anyone who wishes to buy a handgun. Four of these States and D.C. include the purchase of long guns in this requirement. These checks are done during a waiting period that ranges from 2 days to 6 months. Two States without waiting periods do a criminal history check only after the purchase is made. Twenty-eight States currently require no criminal history check for firearm purchases.

Any system for identifying felons who attempt to purchase firearms must confront two distinct issues of scope. One is the large number of firearm sales in this country. The estimated annual total of 7.5 million retail sales is equivalent to a daily average of more than 20,000 sales, assuming a 7-day business week. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than midweek, it is likely that on peak days as many as 30,000 or more firearms are sold. During hunting season peak-day sales may reach 50,000 firearms. Any new system for identifying felons must

be capable of handling this heavy volume. Second, such a system must involve either the participation or cooperation (depending on the system) of 270,000 licensed firearms dealers. Although precise figures do not exist, it is estimated by the BATF that 60-70% of these dealers are not gun stores as such, but rather individuals who collect and deal in guns on a small scale (hobbyists, collectors, etc.). These small-scale dealers account for an estimated 20-25% of all firearm sales. Any system that placed special demands on gun dealers in terms of capital expenditures, training, or personnel resources would pose a particular problem for these small-scale operations. Other problems may arise in attempting to identify felons who purchase firearms during gun shows or in other ways outside of normal retail outlets.

Key elements of a felon identification system

There are three key elements of the felon identification system mandated in Section 6213 of the Anti-Drug Abuse Act of 1988: (1) the definition of felon, (2) the meaning of "immediate," and (3) the level of accuracy required.

Definition of felon

Section 6213(a) relies on the definition of felon previously specified in the Gun Control Act of 1968 (with subsequent amendments). This definition includes those convicted of a "crime punishable by imprisonment for a term exceeding one year," but excludes (1) certain specified Federal or State offenses relating to the regulation of business practices and (2) any offense classified by the State as a misdemeanor and punishable by a term of imprisonment not exceeding 2 years. Also excluded are those whose conviction has been expunged or set aside and those who have been pardoned or who had their civil rights restored.

This definition presents certain problems for any system that would access automated criminal history records as part of a clearance process:

First, automated conviction records do not show how long a person *could have been* sentenced. Approximately one-third of those convicted of felonies in State courts receive no incarceration sentence. Another fifth receive a sentence to a local jail, usually for less than 1 year. In these cases the automated conviction and sentencing records often will not show whether the conviction could have resulted in a sentence of more than 1 year and therefore whether the offense met the Federal definition of a felony.

Second, the offense identifiers contained in automated conviction records may not precisely show whether the offense is one of the business related crimes exempted from the Gun Control Act.

Third, automated criminal history records may not accurately show whether a conviction offense is a misdemeanor punishable by no more than 2 years of incarceration, also exempted from the Gun Control Act.

Finally, automated criminal history records often do not show

whether a conviction has been set aside or led to an eventual pardon or the restoration of civil rights.

Immediate

The Anti-Drug Abuse Act does not define "immediate" with relation to the mandated felon identification system. In the absence of such a definition the Task Force has considered options that would meet the immediacy test in two distinct ways. One is a system that would involve on-site inquiries by gun dealers (by telephone, for example) to determine eligibility at the time of purchase with response times of one to several minutes. The other is a system involving a preapproval mechanism whereby a prospective gun purchaser would apply for documentation (such as a license, permit, or identification card) authorizing him to purchase firearms and then use that documentation each time he makes a purchase. In such a system the application process would take approximately 4-6 weeks. Once the documentation was issued, however, the purchaser could buy a firearm without additional delay at the time of sale.

Accurate

Although the Anti-Drug Abuse Act mandates the "accurate identification of felons," it does not specify the level of accuracy that would be acceptable. Accurately determining who is a convicted felon involves two issues. First is the identification of the person attempting to purchase a firearm. Although standard identification documents such as driver's licenses and credit cards are regularly used in commercial and banking transactions, these are not definitive evidence of the identity of the bearer. Such documents may be altered or counterfeited or may be originally obtained with false information. Because identification documents cannot absolutely prove identity, "biometric" information (physical evidence such as fingerprints, retinal scans, DNA, etc.) is often used to establish positive identity for various purposes. New technologies, such as automated fingerprint identification systems (AFIS), have dramatically increased the speed and efficiency of using biometric information to establish identity. This report explores the possibility of using biometric information and biometric technologies to identify accurately convicted felons who attempt to purchase firearms.

The second issue regarding the accurate identification of convicted

felons is the quality of the criminal history data bases that would have to be accessed to verify that a firearm purchaser was not a felon. A perfectly accurate criminal history data base would be up-to-date (new arrests, convictions, etc., would be entered promptly), complete (all official transactions would be entered), and devoid of any inaccurate data that might, for example, show a conviction in a case that resulted in acquittal or dismissal. The issue of accuracy and completeness of criminal history data bases is addressed in greater detail below.

The quality of felony conviction data

As discussed above, the congressional mandate to establish a felon identification system for firearm sales requires identifying those who have been convicted of a Federal or State offense punishable by imprisonment for more than 1 year (with certain exceptions). How accurate and complete are conviction records? To answer this question requires an examination of where and how criminal history records are maintained.

Criminal history data are maintained in either manual or automated form at three different levels of government: (1) operational law enforcement or criminal justice agencies such as police, prosecutors, and courts; (2) centralized State criminal history repositories (often run by the State police); and (3) the Federal Bureau of Investigation (FBI).

Within the States the criminal history repositories are responsible for maintaining complete and accurate information of official criminal justice transactions. Such transactions include arrests for serious crimes, decisions not to prosecute, court dismissals, convictions and acquittals, admissions to and releases from local jails and State prisons, and entries to and exits from probation and parole. A 1984 survey of State criminal history repositories conducted for the Bureau of Justice Statistics revealed that more than 35 million criminal history records were maintained in the States (*State Criminal Records Repositories*, Technical Report, Bureau of Justice Statistics, October 1985). In 11 States the records were not automated, and in most of the others automation was only partial. Half the States reported that they had a fully automated *name index* to their criminal history records, even when the records themselves were manual. Only seven States reported that they did not have at least a partially automated name index. A telephone survey of 20 States conducted for the Task Force in April of this year showed that only 3 of the 20 States had fully automated criminal history records, and half the States had less than 65% of their records automated (*A Survey of Twenty State Criminal History Repositories*, Fisher-Orsagh Associates, June 1989). On the other hand, 14 of the 20 States had fully automated name indexes to their criminal history records.

Currently, two telecommunications networks link law enforcement agencies to State repositories: the National Law Enforcement Telecommunications System (NLETS) and the network supported by the National Crime Information Center (NCIC). The NCIC network links law enforcement agencies with the Interstate Identification Index (III) maintained by the FBI. Law enforcement agencies use computer terminals to inquire whether a criminal history record exists for a named individual. If such a record exists in the repository of 1 or more of the 20 States that participate fully in the III system, the inquirer is notified and can request the criminal history record through NCIC. In addition to pointing to State data for the 20 fully participating States, the NCIC system makes directly available any other criminal history information from the FBI's own automated records maintained in its Identification Division. These records include information from the other 30 States as well as Federal criminal justice transactions.

The FBI's Identification Division is responsible for conducting fingerprint checks on individuals processed through the criminal justice system and on those who must pass a criminal history check for specified jobs or positions (such as Federal Government employees, child care workers in some States, etc.). These fingerprint-based criminal justice transactions form the basis for substantial criminal history information. This information is maintained in three basic categories at the FBI. The largest is the group of automated criminal history records for 12.5 million persons arrested for a fingerprintable offense (a felony or serious misdemeanor) for the first time on or after July 1, 1974. Next largest is the group of manual records for 8.8 million persons born in or after 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The smallest is the group of manual records for 3.6 million persons born before 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The FBI maintains an automated name index both to the 12.5 million automated files and to the 8.8 million manual files of those born in or after 1929. There is no automated name index for the final group. Currently, the automated name index and the automated files for the 12.5 million persons arrested for the first time on or after July 1, 1974, are linked to the NCIC system. Thus, those who make inquiries through NCIC will access these automated records but not any of the manual records maintained by the Identification Division.

Given these data systems, the law enforcement official who wants immediate access to felony conviction data has two basic options: to access directly the automated records maintained by his own or

another State or to access interstate and Federal records through the NCIC system. He may, of course, do both. The problem, however, is that the conviction records accessed through these computerized methods are not complete.

These conviction records are incomplete for two distinct reasons. First, as noted above, many records at both the State and Federal levels are not automated. Among States recently surveyed, an average of about one-third of criminal history records were not automated; at the FBI the proportion is about one-half. (It should be noted, however, that the automation of the records of young, active offenders is much more extensive than the records of older, less active offenders.) Second, and equally important, convictions, as well as other final dispositions, are often not reported to the State central repository or to the FBI even when an automated record exists of the individual's arrest. The FBI, for example, estimates that approximately one-half of the arrest charges in their records do not show a final disposition. Data from the 1984 survey of State repositories cited above show that about 34% fewer final dispositions than arrests were reported to the repositories in 1983. (Ideally, each arrest should eventually be matched by a final disposition.) In several States the proportion of underreporting was as high as 70-80%. Moreover, the April 1989 survey of 20 States revealed that 8 of the 17 States able to supply a figure estimated that at least 20% of convictions within the State were not reported to the repository.

Based on the combination of partial automation of criminal history records and underreporting of convictions, it is reasonable to estimate that nationwide the records of approximately 40-60% or more of felony convictions are not currently available in automated form and thus not immediately accessible by law enforcement authorities. Such a high level of undercoverage renders impracticable a felon identification system that relies principally on immediate access to automated conviction records. It should be pointed out, however, that because many felons have more than one felony conviction, there are likely to be automated conviction records covering more than 40-60% of felons.

This problem of undercoverage, however, can be significantly mitigated if the manual records maintained by the State repositories and the FBI are accessed. There are two ways to access these manual records. One is to use the automated name index to the manual records, if one exists, to identify a record and then manually retrieve and examine it. The other, more common, method is to do a fingerprint search based on a full 10-print fingerprint card. If a fin-

gerprint match is found, then the manual file can be retrieved and examined. This method is by far the more reliable since it establishes a positive identification. Because both of these methods require direct human intervention at some stage, they are not as immediate as a computer-based search of automated files. For example, the FBI currently requires 14 business days to process a fingerprint card, and, depending on the location of the requesting agency, an additional 4-10 days may be required for mail handling. (For the sake of simplicity the rest of the report assumes an average of 7 days for mail handling.) A new automation system at the FBI holds the promise of reducing fingerprint processing time to somewhere between 2 and 10 business days, depending on a proposed expansion of computer resources.

While accessing manual records reduces the undercoverage that exists in a search of only automated files, it does not eliminate the problem. As indicated above, a significant proportion of final dispositions are not reported to the State repositories or to the FBI for inclusion in either automated or manual records. In these cases the law enforcement official may be able to get the missing disposition information directly from the court or prosecutor's office for the jurisdiction where an arrest took place, but not through an on-line computer-based search.

Impediments to creating a perfect system

A perfect system for immediately and accurately identifying convicted felons who attempt to purchase firearms would have three key elements: (1) a complete and accurate automated data base showing every conviction for a State or Federal offense punishable by more than 1 year in prison and clearly showing the specified exceptions (such as business related offenses, misdemeanors punishable by 2 years or less in prison, convictions set aside or pardoned, and cases where civil rights were restored); (2) a means for positively verifying the identity of a prospective purchaser at the time of the sale of the firearm; and (3) a mechanism for immediately linking identifying information about the purchaser with the information in the data base.

Such a perfect system may eventually be implemented. However, it is not feasible or practical at this time. There are several reasons for this conclusion.

First, as the above discussion has shown, automated conviction records are too incomplete to rely on to identify convicted felons. Moreover, even when conviction information is available it will not necessarily show whether that offense meets the Federal definition of a felony or whether the conviction was subsequently set aside or the offender had his civil rights restored.

Second, positive verification of identity at the time of the gun sale would necessarily require the collection of biometric information by the gun dealer. Based on the Task Force's review of state-of-the-art identification technology and its survey of the capabilities of the State repositories, it appears that the only feasible way to do this is with a 10-finger live scan that digitizes the prints and then transmits the digital representation over telephone lines to repositories capable of receiving this information and automatically searching their data bases for a match. Machines capable of collecting and digitizing a full set of prints currently cost approximately $35,000-100,000 each. This is prohibitively expensive to require of all gun dealers. If purchased by the government for use by 270,000 gun dealers, current prices would require an investment of approximately $9-27 billion. If restricted to the estimated 35% of federal firearm licensees who are actual commercial dealers, the cost would be approximately $3-9 billion. No doubt, mass production would reduce the cost; nonetheless, the sophisticated optics

and computer hardware used in these machines would limit the cost reductions. In addition, it takes a substantial amount of training to operate one of these machines, thus raising questions about the logistics of training 270,000 firearm licensees, or even the estimated 95,000 commercial dealers. Moreover, because it takes about 6 minutes to get each set of 10 prints, gun dealers that average 10 sales an hour would have such a machine running constantly and would require an additional full-time trained employee just to operate it. This would further raise the cost to the dealer.

(Note that machines that take and digitize a single print for communication to an external data base are much less expensive — approximately $3,000-6,000 — but these are not suitable for matching a single individual to a data base of millions of offenders. Such single-print searches are extremely computer-intensive, often requiring hours to complete, and are unreliable for proving identity in a search of a massive data base. Currently, such single-print searches are used as an investigative tool in serious crimes to produce a list of possible identities or are used for security purposes to compare one individual's prints against those already on file.)

Finally, even if sophisticated AFIS technology were made available to gun dealers, it would be necessary to convert and/or upgrade the technology in most of the State repositories and the FBI so that digitized fingerprint information could be received and compared to fingerprint-based data bases. This would be a massive and expensive operation.

Practical alternatives

What, then, are the practical alternatives for establishing a reasonably effective system for identifying convicted felons who attempt to purchase firearms? The Task Force has identified two different kinds of systems that would meet the Congressional mandate and allow for the beginning of implementation by December of 1989. Both types of systems would rely on currently available identification techniques and technologies but would be open to improvements in identification documents and methods, including those involving biometric information. The two basic options are identified here as Option A and Option B. The body of the report includes a sample of possible modifications of these two basic options.

Option A: Point-of-sale approval through a telephone check

Option A provides for on-site, immediate access to automated name indexes maintained by State repositories and the FBI through telephone calls to the repository of the State in which the sale takes place. State officials would use computer terminals tied into their State records and into the NCIC and NLETS networks to determine whether there was an arrest record either within or out of State for someone with the name, race, sex, and date of birth of the prospective gun purchaser. If there was no "hit" during this immediate verification process, the gun dealer would be notified over the phone and the sale would be made. If there was a "hit," the sale would not be allowed at that time. If the prospective purchaser wished to pursue the sale, he would seek clearance through a secondary verification process. Under this procedure fingerprints would be taken at a local law enforcement agency and sent to the State repository. A fingerprint search would be conducted by the State and then by the FBI. Any criminal history records obtained through the fingerprint check would be examined by State officials for an indication of a conviction for a disqualifying offense. Incomplete information would be supplemented by inquiries to courts or prosecutors' offices. If no evidence of a conviction for a disqualifying offense was found, a Certificate to Purchase would be issued to the prospective buyer (valid for up to 1 year). The purchaser would present this documentation to the gun dealer certifying his eligibility.

The entire secondary verification process could take as long as 4-6 weeks. It is estimated, however, that approximately 84-88% of prospective gun purchasers would successfully pass the initial verification and thus would not have to go through the secondary verification. Reasonable modifications of this system might reduce some of the burdens placed on the eligible purchaser.

Option B: Firearm Owner's Identification Card

Option B is essentially the same as the secondary verification of Option A. The difference is that everyone who wanted to purchase a firearm would go through a fingerprint-based clearance process. If there was no evidence of a felony conviction, as defined by Federal law, the State would issue a Firearm Owner's Identification (FOID) Card valid for up to 3 years. This card would be presented whenever the bearer wished to purchase a firearm. The chief advantage of Option B over Option A is that it eliminates the problem of the false "hits" that occur in a name-based automated criminal history check because of mistaken identity. This option also has several disadvantages. The chief disadvantage is that it puts every prospective gun purchaser through a 4-6-week clearance procedure every several years. It also places much greater demands than Option A on existing criminal justice identification systems and is thus considerably more expensive.

The Task Force has also identified a variety of higher-technology variants of these two basic options. They are summarized here.

Option A1: Computer terminal access by gun dealer to disqualifying information

This option would replace the telephone calls of Option A with direct computer terminal access to an intermediary computer that would review the State and Federal criminal history indexes and transmit notices of approval or denial to the dealer. This would be considerably more expensive than Option A in the short run and would present no particular operational advantages over it.

Option A2: Touch-tone telephone access by gun dealer to disqualifying information

This option is similar to Option A1 but substitutes a touch-tone telephone for computer access. Like Option A1 it is more complicated and expensive than Option A, at least in the short run, without any corresponding advantages. It is possible that in the long

run Options A1 and A2 would be less expensive than Option A by reducing the need for computer operators at the State repository to respond to the calls from the gun dealers.

Option A3: Live scan of fingerprints by gun dealer

This option, requiring that fingerprints be taken directly at the point of sale and digitized for transmission to the record repository, is similar to the biometrically-based system described previously in the discussion of a perfect felon identification system. While it would provide the greatest assurance of a positive identification, it would be the most difficult and expensive to implement.

Option A4: Biometric identification card

This option is not so much an alternative to the basic Option A as an additional feature that could be added to it. Under this option positive identification would be enhanced at the gun dealership by the comparison of a single fingerprint of the prospective purchaser with digitized information from a biometrically-based identification card issued by the State.

Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer

This option combines elements of both prior approval and immediate check. Prospective gun purchasers would go to a designated law enforcement agency for a criminal history clearance. The agency would conduct a live 10-print fingerprint scan using AFIS equipment (as in Option A3). The digitized fingerprint information would be transmitted to the State repository and the FBI to check for arrest and conviction records. Applicants who passed this clearance would be issued a FOID card. Those wishing to purchase a firearm would present the FOID card to the gun dealer. Equipment at the dealership would allow a comparison of a single fingerprint from the purchaser to digitized information on the card (as in Option A4).

Option B2: Smart card containing disqualifying information

Under this option every adult would carry an identification card issued by the State of residence, such as a driver's license, that would have electronically imprinted identifying information, including biometric data and information such as felony convictions that would legally bar someone from purchasing a firearm. At the

gun dealership such a card would be placed into a reader to verify identification (by comparison with a single fingerprint) and to determine whether the bearer was prohibited from purchasing a firearm.

Creating a data base of ineligible persons

Several of the organizations that commented on the earlier draft of this report (June 1989) proposed that a national data base be created of convicted felons and possibly others prohibited by Federal law from purchasing firearms. This data base would include such personal identifiers as name, date of birth, sex, race, and possibly such descriptive features as height, hair color, eye color, etc. It could also include a digitized representation of the fingerprints of the ineligible person, allowing for remote positive verification that an individual desiring to purchase a firearm was not prohibited because of a criminal conviction.

Because existing criminal history records are arrest-based, they include many individuals who are not ineligible to purchase firearms either because the arrest did not result in a conviction or because the conviction was not for a disabling offense (as specified in the Gun Control Act). For example, the FBI maintains records for some 25 million persons who have been arrested for a felony or serious misdemeanor. An unknown fraction of these 25 million have been convicted of an offense making them ineligible to purchase firearms. If this fraction is somewhere between 20% and 50%, then a data base limited to those with disabling convictions would contain records on 5-12.5 million persons. If this data base were automated and made accessible to law enforcement authorities through the NCIC or NLETS telecommunications systems, it could facilitate both point-of-sale checks (Option A and its variants) and preapproval checks (Option B and its variants). It would also eliminate one type of false positive in the on-site telephone check by gun dealers (Option A): cases where someone has an arrest record but no disabling conviction. Although it would not eliminate the other type of false positive — cases where the prospective buyer has the same personal identifiers as a prohibited person — there would be fewer of these since the data base to be checked would be considerably smaller than existing arrest-based records. In addition, if a new data base were established, it could include more identifying information than existing automated records, further reducing the likelihood of false "hits."

Another advantage of establishing such a data base is that lists of other persons ineligible to purchase firearms, such as those who have been dishonorably discharged from the Armed Forces, could be added to it.

Whatever the merits of creating a data base of those who have been convicted of an offense disqualifying them from purchasing firearms, the Task Force did not explore this option systematically for the simple reason that automated conviction records throughout the United States are currently too incomplete — both in terms of coverage and of the information necessary to determine whether a conviction offense meets the criteria established by the Gun Control Act — to consider this a viable short-term option. This in no way precludes consideration of such an option as a longer term possibility, especially if disposition reporting improves within the States.

Cost estimates

All of the options detailed here would place substantial new demands on Federal and State criminal history repositories and law enforcement agencies. In the few months that the Task Force has been operating it has not been possible to develop precise estimates of the cost implications of each of the options. Nonetheless, some broad estimates have been derived. These should be taken only as a general indication of the cost implications of a felon identification system. They are conservative estimates that may have to be revised upward as the implications for local, State, and Federal practice are more fully explored.

Option A, which is judged to be the least expensive of the various possibilities, would have projected combined local, State, and Federal start-up costs of $36-44 million. Annual operating expenses would be an estimated $53-70 million. Other variants of Option A would cost some additional amount over the base system. (There is the possibility, however, that a more fully automated system that electronically connected gun dealers to the necessary disabling information would in the long run prove less expensive than Option A by reducing ongoing personnel costs.)

Option B, the basic preapproval system, would have total estimated start-up costs of $148-153 million, and additional annual operating costs of $136-161 million. The two other variants of Option B would likely cost considerably more.

Note that if existing criminal history checks for gun purchasers are taken into account, the actual new cost would be somewhat lower than these estimates — perhaps 8-12% less for operational costs.

Part, or all, of these costs might be recouped by charging the gun purchaser a special fee. Assuming 7.5 million gun purchases per year, a fee in the range of $7-9 per firearm might cover the annual operating costs of Option A (although not the start-up costs). Assuming 6 million FOID cards issued in the first year under Option B and 5 million issued each subsequent year, a fee in the range of $27-32 per application would be necessary to cover annual operating costs. (Some may consider such fees an unfair burden on innocent purchasers. An alternative approach may be to impose special fines on those convicted of firearms violations.)

The following summarizes cost information for the two basic options and those higher-technology variants for which enough information was available to approximate at least partial system costs:

Options	Start-up costs (millions)	Annual operating costs (millions)
A: Telephone check by gun dealer	$36-44	$53-70
A3: Live scan of fingerprints		
by all gun dealers	$9,590-27,144	$3,047-8,347
by commercial dealers only	$3,457-9,636	$1,172-3,063
A4: Biometric identification card checked		
by all gun dealers	$198-368	$102-168
by commercial dealers only	$93-158	$70-105
B: FOID card	$148-153	$136-161
B1: Live scan by law enforcement and biometric check		
by all gun dealers	$344-572	$203-295
by commercial dealers only	$239-362	$171-232

Implementation issues

There are four broad possibilities for implementing a felon identification system: (1) to create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different ways; and (4) to offer the States several models for a cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system because 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential to an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal Government would select a felon identification system and each State would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States.

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia (covering more than half of the Nation's population) currently conduct some kind of criminal history check for those who wish to purchase handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records when con-

ducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from Federally licensed dealers are covered, and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal Government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal Government would expand its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

Legal and policy issues

Whatever option is chosen, new legislation would be required to address a number of issues: (1) to mandate a specific system on the States, to establish minimum Federal standards, or to base a system on voluntary compliance by the States; (2) to establish the funding mechanism for carrying out the criminal history checks, possibly involving user fees by gun purchasers; (3) (under some options) to authorize the release of limited criminal history information to gun dealers (e.g., whether there is a "hit" on a name search of automated arrest records); (4) to specify penalties for gun dealers who improperly disclose criminal history information obtained as part of a felon identification system; (5) to determine the minimum acceptable level of accuracy for the system; (6) to establish a statutory right of appeal for the prospective gun purchaser from any adverse decision, including the right to inspect records; and (7) to set forth policy regarding the use of information generated by a felon identification system, including any fingerprint data collected. (This is an illustrative, not an exhaustive, list.)

Solving the problem of felons acquiring firearms

In evaluating the various possibilities for identifying convicted felons who attempt to purchase firearms, it must be recognized that even a perfect felon identification system would not keep most felons from acquiring firearms. One study of convicted offenders in State prisons found that about five-sixths of those who admitted to ownership of a firearm claimed to have acquired the weapon through some means other than purchase through a retail outlet (*The Armed Criminal in America*, National Institute of Justice, November 1986). (A small proportion of felons, however, may translate into a large number of individuals.) These other means included the black market, thefts, and informal transactions with friends or associates such as a purchase or trade. An effective felon identification system will do little to eliminate or reduce these off-the-record transactions. Indeed, a particularly effective system may force even more felons to turn to the black market for their weapons or to use accomplices without a criminal record to purchase guns for them. Nonetheless, a system that keeps felons from purchasing weapons over the counter may at least increase the difficulty, and perhaps the costs, of acquiring weapons for use in crime and may, in fact, deny weapons to some number of less sophisticated criminals unable to access the black market or to find willing accomplices. Moreover, because black markets may not provide ready access to the high quality weapons available through retail outlets, an effective felon identification system may restrict the quality, if not the quantity, of weapons in the hands of felons.

Part II. Options for a felon identification system

Section 1. Schematic overview

In considering the design of a system for identifying felons who attempt to purchase firearms, it is useful to begin with a general overview of the basic components. Any final system would be comprised of an approval procedure, a designated processing organization, access to data sources, a designated decision organization, final action, and an appeals process. Different systems are basically different combinations of options among these components. (See Exhibit 1.)

Approval procedures

Approval to purchase a firearm may occur either prior to an individual's trip to a gun dealer or at the point of sale in the shop. Prior approval schemes include the issuance of: (1) an identification card, which establishes in advance that the individual is eligible to purchase a firearm, (2) a certificate to purchase, which permits an individual to purchase a firearm for a limited period, or (3) a smart card on which basic data are encoded that establish an individual's eligibility. Point-of-sale approval procedures may involve telephone checks by the gun dealer of criminal history records through local or State law enforcement agencies or a regional office of the Bureau of Alcohol, Tobacco and Firearms. Direct checks of data bases could also be made over touch-tone telephone lines: dealers would access data with a series of identifying numbers and receive approval or denial from a State or Federal computer system. Dealers could also make electronic checks through terminals or automated biometric devices with direct lines to the National Crime Information Center (NCIC) and State criminal history repositories.

Processing organizations

Identification systems for firearm purchases may employ one or more organizations that process an application and search the criminal history data bases. For example, applicants may be required to appear in person at a local law enforcement agency, such as the police or sheriff's department, to obtain a permit or identification card. This agency would search local files and access State or Federal files through the NCIC and NLETS communication systems. Alternatively, the applicant could apply at the point of sale, and the gun dealer would call a local, State, or Federal agency to receive approval for the sale. A slightly different system could designate the regional offices of the Bureau of Alcohol, Tobacco and Firearms as processing agents for firearms applications and as conduits through which access is gained to State or Federal data bases.

Finally, a wholly separate agency could be established at the State or regional level to function as a Felon Identification Center.

Data sources

Currently, two basic sources of criminal history data (State and Federal) can be accessed to determine if an applicant has a disqualifying conviction. Any system of identification for firearm purchases must specify which data bases are to be used and how they will be accessed.

Most States maintain a repository of criminal history record information (CHRI); in a few States the repository is maintained by a municipality or consortium of local law enforcement agencies. States also maintain "hot files," listing outstanding wants and warrants. The degree of automation of the CHRI files varies considerably from State to State: some repositories are completely automated, others partially automated, and a few States maintain only paper files.

Criminal history data and "hot files" are also maintained at the Federal level within NCIC and the Identification Division of the FBI. The Federal files contain records from the applicant's State of residence as well as Federal and out-of-State records. These records may be accessed through fingerprint searches (via the mail) or through electronic name and date-of-birth searches (via NCIC access to the Interstate Identification Index [III]).

Finally, a new data source could be created for the specific purpose of identifying individuals with disqualifying convictions and other individuals prohibited from buying firearms. A national center, for example, could create and maintain an index, which would merge indexes from current State and Federal data bases, mental health records, and records kept by the Immigration and Naturalization Service. This national index of individuals prohibited from purchasing firearms would be updated continuously. It would serve as the sole data source for Federal regulation of firearm purchases.

Decision organizations

Once the processing organization has checked the data bases, the data must be interpreted and a decision made. The processing organization may not necessarily be the decision organization. Local law enforcement may evaluate the data or rely on the State police or identification bureau to do so. In response to problems of evalu-

ating out-of-State and Federal records, other system designs may designate regional or Federal agencies as the decision organization.

Action

The designated decision organization must either approve or prohibit an individual from purchasing a firearm. Depending on the type of approval system, the organization would transmit the decision to the applicant directly or through the gun dealer. Potential options include issuance of a card, a certificate, a notice of denial, or an electronic message of approval or denial.

Appeals process

Once an applicant receives final notice that the application has been denied, he may appeal the decision. The designated appeals organization may be the local police, a State agency, a regional office of BATF, or some other agency. Legislation may also establish a right to a judicial appeal once administrative appeals are exhausted.

Basic options and variants

Although there are numerous possible combinations among these components, the Task Force has detailed two basic options: Option A, which is a point-of-sale telephone check by gun dealers with secondary verification, and Option B, which is a pre-approval system requiring a firearm owner's identification card. The descriptions presented here specify for each basic option the type of approval procedure, the processing organization, the data sources, and the final decision organization. There is additional discussion of specific characteristics, estimates of volume, cost figures, advantages and disadvantages, and potential modifications. Each basic option is followed by several higher-technology variants.

Part II. Options for a felon identification system

Section 2. Point-of-sale approval systems

Option A: Telephone check by gun dealer with secondary verification

A cooperative Federal and State system would be established requiring that gun dealers obtain clearance from a designated law enforcement agency at the time of sale of all firearms. This system would include both (1) an immediate telephone check of automated criminal history records by gun dealers through a designated law enforcement agency and (2) a secondary fingerprint-based verification procedure for all individuals rejected through the initial telephone check. Each system would have the following elements:

Telephone check (Exhibit 2)

1. At the time of purchase each gun dealer would require the buyer to fill out an application and show two pieces of identification, with at least one having a current photo.

2. The gun dealer would be required to telephone a State law enforcement agency for a criminal records check. Appropriate security procedures (such as a call-back procedure or password system combined with additional dealer identification and access codes) would be introduced to protect against unauthorized entry and dissemination.

3. The designated State law enforcement agency would access existing telecommunications networks to check the master name index within the State of purchase and the FBI's Automated Identification System—Phase III (AIS-III). The AIS-III index contains pointers to the Interstate Identification Index (III) for out-of-State arrests. Both State and Federal "hot" files would also be checked.

4. Initial checks would be made of the State and Federal master name indexes. These indexes contain identifying information on persons previously arrested for "printable" offenses (felonies and serious misdemeanors). Since these are arrest-based indexes, some of the applicants found on these indexes (e.g., those arrested for a felony but not convicted, those convicted of misdemeanors only, and those who were pardoned) will be qualified to purchase firearms. In those States in which criminal history files are automated, it may be possible to access and evaluate individual files while the gun dealer remains on the phone. It may also be possible to access and evaluate some out-of-State records. (Note that cur-

Option

rently several hours are often required through the NCIC system to obtain records for individuals arrested in the 20 III States).

Option A

5. The gun dealer would immediately (i.e., within a few minutes) receive notice of permission or denial of sale from the designated law enforcement agency. The dealer would receive a transaction number for each inquiry and be required to record the number on each application. Regardless of whether or not the sale was made, the dealer would be required to retain a copy of the application and a record of the telephone inquiry. The designated law enforcement agency would retain records of all inquiries for use in audits of gun dealers. Names of applicants would not be retained on the inquiry data base.

6. If the sale was denied, the gun dealer would instruct the applicant that a Certificate to Purchase may be obtained from a local law enforcement agency.

Secondary verification (Exhibit 3)

1. An applicant who previously failed a telephone check would be required to appear in person, with two pieces of identification, at a law enforcement agency in the State of the applicant's legal residence. (Special procedures would have to be established for the sale of firearms to out-of-State residents.)

2. Each applicant would be fingerprinted, and the fingerprint cards would be mailed to the State criminal history repository.

3. The State agency would access in-State automated and manual criminal history records and also send the fingerprint cards to the FBI for a check of out-of-State records.

4. If an FBI rap sheet was found for the applicant, the State agency would receive by mail a copy of the records maintained by the FBI's Identification Division. These records would include Federal criminal justice transactions as well as transactions in the 30 States that do not participate in the Interstate Identification Index (III). Additional information from non-III participating States could be sought directly from these States through NLETS. If the applicant had been arrested in a III participating State, as indicated by the FBI records, the State agency would request via NCIC additional records from such a State. If the records so obtained were insufficiently complete to make a final determination of eligibility (e.g., lacking disposition data), additional information could be sought

by telephone or mail inquiry to the relevant courts or prosecutors' offices.

5. Based on all the available information, the State agency would make a determination whether there was evidence of a disqualifying conviction and would issue either a Certificate to Purchase or a Notice of Denial. The Certificate to Purchase would be valid for no more than 1 year. The designated State agency would maintain a data base of all certificates issued. Individuals could renew their certificates by submitting a written application—no fingerprints would be required. Names of individuals not renewing their certificates would be purged from the data base at the end of 1 year.

6. Copies of the Certificate to Purchase or Notice of Denial would be sent to the applicant and to the local law enforcement agency submitting the fingerprint card.

7. If a Notice of Denial was issued, the applicant would be informed of his right to appeal (see Part II, Section 4.)

8. If the applicant possessed a Certificate to Purchase and decided to purchase a firearm, the gun dealer would be required to verify, prior to sale, the identity of the purchaser — through two pieces of identification — and the validity of the certificate — by calling the designated State agency to check the validity of the Certificate to Purchase against the certificate data base.

Data sources

The initial telephone check would scan the State and Federal automated name indexes and would access whatever automated rap sheet data could be immediately retrieved. Access to this information would be through a designated law enforcement agency only. (See Part IV, Section 3, and Exhibit 4 for an overview of national access to criminal history files.)

Obtaining a complete check of out-of-State records would require expanding the FBI's Automated Identification System-Phase III (AIS-III), which is accessed through the NCIC telecommunications network. Currently, only those individuals first arrested on or after July 1, 1974, are listed in the AIS-III master name index (approximately 12.5 million persons). The records of approximately 8.8 million individuals born in or after 1929 but arrested before July 1, 1974, are *not* currently accessible through the NCIC network.

Option

In general, the current name indexes to criminal history data at the State and Federal level are arrest-based data sets only, containing identifying information on individuals arrested for felonies and serious misdemeanors. In some instances, for example, if the charges are dropped or if the individual is acquitted or pardoned, States may purge the indexes of these names. With few exceptions, these indexes do not contain information on convictions. These indexes also exclude information on juvenile records. In general, criminal history records on juveniles are only retained in State and Federal files if an arrest results in a charge or trial as an adult.

Option A

The secondary verification procedure utilizes all criminal history data bases at the State and Federal levels, including automated and manual records. In addition these may be supplemented by direct queries to courts and prosecutors' offices. State law enforcement officials, who are in the best position to interpret criminal history records, will determine whether there is sufficient evidence of a conviction that meets the Federal standard for disqualification.

An inquiry data base would be created and maintained by the designated State agency. This data base would record basic information on all inquiries from the gun dealers. For each inquiry, a dealer's license number, a transaction number and date, and an outcome code (i.e., approval or denial) would be recorded. This information would be used by BATF for subsequent audits of gun dealers. Names of applicants would not be retained in this data base.

A data base containing a list of the Certificates to Purchase and Notices of Denial would also be created and maintained by the designated State agency. This data base would contain basic information on individual applicants who had previously received a Certificate to Purchase or Notice of Denial. It would contain an applicant's name, date of birth, race, sex, a flag indicating approval or denial, and (when appropriate) a number assigned to the Certificate to Purchase. The data base could be updated continuously for subsequent disqualifying convictions if fingerprint data or State identification numbers were retained for all persons receiving a certificate. After 1 year the Certificate to Purchase would expire. A new certificate would be issued if the applicant submitted a renewal form and passed subsequent State and NCIC checks. Renewal would not require resubmission of an applicant's fingerprints. Identifying information on all other holders would be removed from the data base after 1 year. This data base would be used by the State agency to verify the validity of certificates at time of purchase. The data base would also be used to detect those individuals

who were issued a Certificate to Purchase but who were subsequently convicted of a disqualifying offense.

This data base would also contain names of individuals issued a Notice of Denial. Such a data base could detect repeated attempts by disqualified applicants to purchase a firearm. Criminal penalties could then be levied against those individuals who attempted to purchase a firearm after receiving a Notice of Denial.

Verification and controls

Gun dealers would be required to maintain copies of approved applications and logs of inquiries. However, gun dealers would not keep copies of rejected applications, which would be sent to the State. Dealers would receive a transaction number for each inquiry and be required to retain this number for subsequent audits. No sale could be made without this number. The designated State law enforcement agency would be required to maintain records on all inquiries.

Gun dealers would be subject to criminal penalties for any false inquiry or disclosure of any information received from a telephone check. False inquiries by gun dealers could be quickly detected if computer-generated notices were sent to subjects of every inquiry. Postcards could be mailed to all persons whose files were accessed.

Procedures would be adopted to verify the identity of gun dealers to the State agency. A call-back procedure could be used; for example, the gun dealer would call the State agency, provide the dealer codes (including dealer identifiers from State or Federal licenses), hang up the phone, and wait for a return call from the State agency. An alternative procedure is a single-call method, with a variable password system and dealer codes linked to a data base maintained by the State agency.

Positive identification

Positive identification of applicants by gun dealers prior to the initial telephone check will be limited by the quality of identification documents presented and by the range of data elements accessible on the State and Federal master name indexes. Currently, searches of the automated indexes are limited primarily to the applicant's name, date of birth, race, and sex. The use of additional data elements, such as place of birth, scars and marks, height, weight, eye and hair color, and miscellaneous numbers (for example, Social

Option A

Security number or driver's license number), depends on whether they appear on existing master name indexes and on their use and accuracy on identification documents. Despite problems of identifying individuals based on name and date of birth, numerous States currently conduct name-based checks on gun applicants. (See Part IV, Section 2, for a description of current State practices in conducting criminal history checks of prospective firearm purchasers.)

Option A

Additional efforts to ensure positive identification by the dealer at the time of purchase could include placement of the applicant's fingerprint on the application form (BATF form 4473, Exhibit 5). The dealer could roll the print of the applicant's right index finger at time of application. Though this print would not be submitted to the State identification bureau, it may serve as a deterrent to those possessing fraudulent identification cards. In the future the print on the application could be used in combination with an identification card containing a similar print. (See Option A3 for further elaboration of fingerprint checks by dealers.)

Positive identification of applicants by dealers at the time of purchase may also be enhanced by continued efforts by States to provide more secure and tamperproof identification documents. In addition, if an applicant provided a drivers' license as identification to the gun dealer, its validity could be checked against files maintained by the State department of motor vehicles. This check could be conducted by the same State agency accessing State criminal history records.

Even if positive identification could be established by the dealers, the State agency would face problems of "multiple hits" (more than one person on the name index with a similar name, date of birth, sex, and race) and "false hits" (a person on the name index other than the applicant with a name and date of birth similar to the applicant's). Estimates obtained from the FBI, detailed below, indicate that approximately 50% of the cases where persons appear to have a criminal history record based upon an initial name search are eventually found to be false hits.

Estimates of volume

Figures obtained from the Bureau of Alcohol, Tobacco and Firearms indicate that approximately 7.5 million new and used firearms are sold annually. This figure represents a 10-year average of domestic firearms production (adjusting for imports and exports) plus used gun sales (estimated at about 50% of all sales of new firearms). The 7.5 million annual purchases is equivalent to a daily average of more than 20,000 sales. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than mid-week, and since firearm sales increase during hunting season, the number of sales may reach as high as 50,000 on peak days.

Assuming that a name check will be conducted prior to every purchase, the number of inquiries into the Interstate Identification Index (AIS-III) would increase by approximately 70% from the current level of 10.7 million inquiries a year. However, relative to all inquiries received daily by NCIC, including "hot" files as well as AIS-III inquiries, name checks of gun applicants would increase the total number of inquiries by about 5% at the peak time during hunting season. The 50,000 additional inquiries resulting from gun applicants are small relative to the recent 1-day record of 1.1 million inquiries into NCIC.

The number of additional fingerprint cards would vary depending on the hit rate from the name check. This rate can only be estimated indirectly. Assuming that the final hit rate on gun applicants will resemble the rate for fingerprint-based checks currently conducted by the FBI on applicant cards, an estimated 6-8% of all applicants will be rejected. (There are currently no national data on ultimate rejection rates for gun applicants.) Further, if half of all initial hits in a name and date-of-birth check of gun applicants are false hits (based on FBI estimates for all applicants), then the expected initial hit rate should be between 12% and 16% for all gun applicants. Finally, not all of the initially rejected applicants may submit fingerprints for the secondary verification — perhaps 10-14% of all applicants will submit fingerprint cards.

The number of applicants for a Certificate to Purchase will be less than the number of purchases, since applicants may buy more than one firearm a year. Precise counts of the annual number of purchases per buyer do not exist. However, if we assume that the majority of applicants will buy only one firearm and a relatively small number will buy many firearms, the estimate of 1.25 firearms per buyer may be a reasonable expectation. Such an estimate suggests

Option A

that an estimated 6 million individuals buy the 7.5 million firearms sold annually.

Option A

As a result of the above assumptions, we may expect approximately 725,000 fingerprint cards on gun applicants as a result of a rejection from the telephone inquiry by the dealer. Assuming the current 5-day week at the FBI's Identification Division, this represents an additional 3,000 fingerprint cards per day—an increase of nearly 10% in the number of cards received daily.

Additional system flows

The estimate of 7.5 million new name searches of automated records and 725,000 new fingerprint checks that would be generated by this option ignores the fact that many States currently conduct criminal history checks of gun purchasers. Twenty-two States and the District of Columbia (covering more than half of the Nation's population) now conduct a pre- or post-purchase criminal history check. Thirteen States and D.C. access Federal and interstate records through NCIC. Six States and D.C. take fingerprints. Four States and D.C. include the purchase of all types of firearms; the others, only handguns.

Presumably, if Option A were adopted, the new criminal history checks would not be conducted on top of existing checks, for this would create an unnecessary redundancy. Either (1) States would modify their existing systems and criminal history checks to conform to the elements of Option A, or (2) the Federal mandate would accept current preapproval systems as effectively accomplishing the goals of Option A if certain minimum standards were met. In either case if current practice is taken into account, the net new impact on Federal and State repositories would be somewhat less than the estimate of 7.5 million new name searches of automated records and 725,000 new fingerprint checks.

Criminal history checks of gun purchasers currently conducted by the States account for approximately 15% of the projected 7.5 million annual inquiries into NCIC under Option A and 8% of the 725,000 fingerprint checks at the FBI. As a result, the additional impact of Option A on NCIC and the FBI Identification Division is estimated at 6.4 million inquiries and 664,000 additional fingerprint cards. At the State level current practices account for a somewhat greater proportion of the inquiries required by this option. An estimated 20% of the total 7.5 million name and date-of-birth searches projected for State identification bureaus under Option A

are currently conducted. Consequently, 6.0 million additional inquiries would be required at the State level under Option A.

Finally, as a result of the proposed expansion of the AIS-III index, the FBI's Identification Division would also need to respond to requests for records on the 8.8 million individuals who were born in or after 1929 but arrested for the first time before July 1, 1974. Expansion of this index would necessitate the assembly, retrieval, and mailing of an estimated 4,000 manual files daily (including 3,000 files to meet anticipated criminal justice requests plus 1,000 files for firearm applicants).

Identifying convicted felons

In many, perhaps most, cases the actual criminal history record of an applicant would be examined only when a fingerprint card is submitted. For an estimated 80-90% of all prospective purchasers, a check would only be made for the existence of a criminal record. For the applicants who were identified by a name and date-of-birth search and who subsequently submitted fingerprints, a more complete assessment of the record would be required.

The difficulty of accurately identifying a convicted felon varies from State to State. In some States felony identification is *automated:* a felony conviction flag exists in the record. In other States felony identification is obtained from the State statutory code listed for each conviction offense. Interpretation of this code is typically achieved *manually,* unless a computer program exists to automatically classify statutory codes as either felony or non-felony offenses. In other States felony identification is only *sometimes possible.* In these States a felony may be determined when a conviction is unambiguously a felony (such as murder or rape) or when a free text field exists and the word felony appears in the field. The issue is further complicated by the fact that the State definition of a felony may not correspond with the definition in the Gun Control Act (an act punishable by imprisonment for more than 1 year.)

The task of accurately interpreting criminal history records is even more difficult when an applicant has been arrested in States other than the current State of residence. ***FBI records do not contain sufficient information to identify felons or those convicted of crimes punishable by imprisonment for more than 1 year.*** FBI offense codes are typically recorded as literals (free text) or as numeric NCIC codes. State statutes and text containing the word "felony" are only infrequently reported.

Option A

Faced with these difficulties, States currently conducting criminal history searches on gun applicants employ three strategies: (1) infer a felony conviction based on sentencing data (e.g., if the record contains a sentence to incarceration of greater than 1 year, the applicant is identified as a felon); (2) obtain more detailed out-of-State records via NCIC or NLETS, which may designate conviction offenses as felonies; and (3) infer a felony conviction from a literal description.

Option A

Response times

The initial telephone check would be immediate, within minutes, assuming sufficient resources. Electronic searches of State and Federal master name indexes could be conducted while the gun dealer remained on the line. Among the 20 State identification bureaus surveyed for the Task Force by Fisher-Orsagh Associates, the average in-house response time for a non-fingerprint search utilizing a terminal is about 20 seconds (*A Survey of Twenty State Criminal History Repositories*, Fisher-Orsagh Associates, June 1989). Additional minutes would be needed if the State agency attempted to reduce the number of false hits by requesting additional information from the gun dealer. An additional 30 seconds would be required for an NCIC check of the AIS-III index.

The secondary verification procedure would require approximately 4-6 weeks to complete. Existing searches based on fingerprint cards at the FBI's Identification Division are processed within 14 working days. An estimated 7 days would also be required for submission of fingerprint cards via the mail and return of FBI rap sheets to the State agency. Some additional time would be necessary for evaluating criminal history records by the designated State agency, including, if necessary, calls to courts or prosecutors' offices.

The response time for secondary verification may be reduced once current automation procedures at the FBI are fully in place. The FBI anticipates that response times will be reduced to somewhere between 2 and 10 days, depending on a proposed expansion of their computer system.

Estimates for fingerprint searches conducted by State criminal history repositories, which would be simultaneous with the FBI checks, indicate a total response time for a criminal justice inquiry of 3 to 23 working days, including mail turnaround time. In the 20 States examined by Fisher-Orsagh Associates, the average response

time for a fingerprint search was 5 days, assuming the search was for a criminal justice purpose. For non-criminal-justice searches the average increased to a total of 9 days. No significant reduction in this response time is expected in the near future.

Costs

Of all options, the telephone check with a secondary verification may be the least expensive to implement and operate. Costs are kept down by using existing technologies, telecommunication systems, and data sources. Costs are further reduced by limiting fingerprint checks only to those individuals appearing on the master name indexes and by creating a State-level data base of Certificates to Purchase and Notices of Denial.

For the telephone checks only, the total estimated cost at the State and local level includes a start-up cost of $14.3-17.7 million and an additional annual operating cost of $30.0-39.4 million. The estimated cost of the secondary verification would include a start-up cost of $8.6 million and an annual operating cost of $10.4-13.3 million. The combined cost for the telephone checks and secondary verification at the State and local level would be between $22.8 and $26.2 million in start-up costs and between $40.3 and $52.6 million in annual operating costs. (For more detailed cost figures, see Exhibit 6 and *Estimates of Start-up and Operational Costs of Systems for Identifying Felons Who Attempt to Purchase Firearms*, Fisher-Orsagh Associates, June 1989.)

At the Federal level the combined cost for the telephone check and secondary verification is estimated at $12.7-17.8 million a year. The start-up cost is estimated at $13.1-17.3 million.

When local, State, and Federal costs are added together, the total estimated annual operating cost for Option A ranges from $53 million to $70 million and the total estimated start-up cost ranges from $36 million to $44 million. Note that if existing criminal history checks for gun purchasers are taken into account, the actual new cost may be somewhat lower than these estimates, perhaps 11-13% lower for operating and start-up costs. On the other hand, these estimates do not include any costs to dealers for new phone lines or staff or to local police for their part in the secondary verification.

A substantial portion of the operating costs could be transferred to the individual applicant through fees for all gun purchases, whether or not a fingerprint search is performed. Given the total

Option A

annual cost estimates, a fee of $7.07-9.39 per applicant per purchase would be required to cover local, State, and Federal costs.

Option A

Impact

1. *Purchasers:* The vast majority of individuals without criminal records would have the immediate ability to purchase a firearm. Except for individuals falsely rejected by the search of the master name indexes, those without criminal records would not be burdened by preapproval procedures.

2. *Dealers:* In addition to current application procedures, dealers would be required to make a telephone call prior to every purchase and to create and maintain a log of all inquiries. The time necessary to make the checks is expected to average about 3 minutes per sale. An additional telephone line may be required for some dealers. Among high-volume dealers, additional staff may be required to handle multiple checks simultaneously without generating long waiting lines at the gun shop.

3. *Local law enforcement:* Local law enforcement agencies would process an estimated 725,000 applications and fingerprint cards a year as a result of the secondary verification procedures. This work load may require some additional staff and funds for agencies currently working at peak levels.

4. *State law enforcement:* The State identification agency or other designated agency for applicant checks would experience a large increase in its work load. To process the estimated 7.5 million telephone inquiries, States would need new communications lines, staff to respond to inquiries, additional office space, computer terminals to access the State master name indexes, and software to build the inquiry data base. State identification bureaus would also require a 7-day work week with longer hours (or 6 days if gun sales were prohibited on Sundays).

To process the estimated 10% increase in fingerprint cards, States would require funds, staff, space, and software to maintain a data base on the Certificates to Purchase. (See *A Survey of Twenty State Criminal History Repositories*, Fisher-Orsagh Associates, June 1989, for the ability of specific States to handle a 10% increase in in-house searches of their criminal history files.) States may also be required to establish an administrative appeals procedure for challenging adverse decisions.

5. *NCIC and FBI Identification Division:* The NCIC communications system would experience a minor increase in volume—an increase of 5% on a peak day during hunting season. To process this increase in volume, 16 additional lines plus an enhancement to the front-end capacity on the NCIC computers will be required. The number of additional inquiries into the AIS-III computer, however, would increase by approximately 70%. To handle this increase, the AIS-III computer must be significantly enhanced. The telephone search would also require additional staff at the FBI's Identification Division to process requests for the 8.8 million manual records of offenders arrested for the first time before July 1, 1974, and born in or after 1929. The manual records would be requested through NCIC for all criminal justice purposes and mailed to the requesting agency by the FBI Identification Division.

Based on the estimated 725,000 fingerprint cards submitted annually and the 4,000 daily requests for manual files through NCIC, approximately 395 additional employees may be needed by the Identification Division as a result of Option A. An estimated 126 of these employees would be technical (e.g., fingerprint technicians, classifiers, and verifiers) and 212 would be typists; all of these would require 3-6 months of training. The FBI would require 12-18 months to recruit and clear these 395 new employees. These new employees would require nearly 8,000 square feet of additional office space.

Impact of AFIS technology on secondary verification

At the present time the FBI and more than half of the States either have an automated fingerprint identification system (AFIS) or are in the process of procuring such a system. These systems, as currently utilized, require technicians to classify the prints according to pattern type; the prints are then scanned, digitized, and matched against prints from an AFIS data base. (Note that new AFIS equipment has recently been introduced that automates the classification process, but this is not yet a proven technology.) At the end of the matching process, a list of all potential identification candidates is produced, and a technician visually compares the print to the corresponding list and makes the identification decision. (See "Appendix" to *Legal and Policy Issues Relating to Biometric Identification Technologies*, SEARCH Group, Inc., June 1989.)

Despite the automation of the search process, further implementation of AFIS technologies will have little impact in the near future on the estimated response times and costs of processing the addi-

Option A

nal fingerprint cards generated by the secondary verification pro-
dure. The AFIS matching process is time consuming and both
bor and machine intensive.

dvantages

Access to criminal history records would be limited to law en-
rcement agencies, except that gun dealers would receive notice of
proval or denial. (However, dissemination of any information to
n dealers indicating evidence of an arrest may violate existing
licies and statutes of some States.)

With the exception of the addition of 8.8 million records to the
S-III index, the system would utilize existing State and Federal
minal history data bases. The additional inquiry data base and
rtificate data base would be easily established and maintained at
ow cost.

Access through NCIC to the 8.8 million manual records main-
ned by the FBI's Identification Division would have added bene-
to law enforcement. Currently, checks are limited to younger
fenders and those first arrested after 1974. Addition of these
cords would enhance the level of service that the FBI could pro-
de to law enforcement agencies nationwide.

Compared to other options, the initial telephone check would
duce the burden on State and Federal identification systems.
ly an estimated 10-14% of all purchases would require a finger-
nt search.

No list of applicants or purchasers would be created. Only those
dividuals issued a Certificate to Purchase or Notice of Denial
uld be identified in a data base. The identity of individuals hold-
certificates would be regularly expunged from the data set
thin a year of the date of issuance.

sadvantages

The validity of the telephone check is only as reliable as the pur-
aser's identification documents. It does not provide unique iden-
ication as do the more expensive fingerprint or other biometric
stems. Consequently, prohibited individuals intent on obtaining
irearm with false identification documents would be able to pass
e telephone check.

2. A major burden would be placed on the State agency accessing the repository data and on local law enforcement agencies that issue the fingerprint cards. The extent of the burden would depend on the volume of requests and degree of record automation. Further automation of State master name indexes and criminal history files would be encouraged.

3. The system would not be immediate for individuals rejected by the search of the master name indexes. In addition, some individuals may be falsely identified because their name and date of birth match those of another individual. Extensive false hits could generate considerable adverse reaction.

4. Rejection of prospective buyers as a result of telephone checks may be perceived by gun dealers as a cause for lost revenue. Buyers who ultimately qualify for purchase may not always return to the original dealer and make the purchase.

5. Occasionally the State or NCIC computer systems may not be operating at the time of purchase, resulting in delays and possibly loss of revenue to the gun dealer. (See modification 8 for procedures in the event of system failure.)

Potential modifications

1. The secondary verification procedure could be modified so that applicants would only be required to appear at a law enforcement agency to be fingerprinted if the State repository was unable to make a positive determination of eligibility after receiving all automated criminal history records. This could take up to a day or two. If the State repository could not determine an applicant's identity or resolve questions of eligibility, the applicant would then be fingerprinted at a local law enforcement agency, and the fingerprint cards would be submitted to the State identification bureau and the FBI for evaluation.

This modification could reduce the burden on applicants eligible to purchase firearms. Applicants with prior arrests but qualified to purchase firearms (e.g., those not convicted of any offense, those convicted only of crimes not meeting the Federal definition of a felony, or those pardoned) would not automatically be fingerprinted or required to wait the projected 4-6 weeks for a complete fingerprint check and evaluation of records.

his modification would also reduce the volume of additional fin-
rprint cards submitted to the State identification bureaus and the
BI.

Option

A fingerprint could be placed on the BATF application (form
73). Once given approval for purchase, the gun dealer would roll
print of the applicant's right index finger, for example. Although
is print would not be submitted to the State identification bureau,
could greatly enhance BATF's ability to prosecute applicants who
ovide false information. In addition, requiring an applicant to
ovide a fingerprint on the application form may serve as a deter-
nt to those who possess fraudulent indentification cards but who
reluctant to submit fingerprints.

Option A

An applicant data base could be created and maintained by the
ate identification bureau. This data base would be queried first
hen a purchaser check was conducted. It would contain basic in-
rmation on individual applicants who had been previously ap-
oved through a point-of-sale name check or a secondary
rification procedure. The data base would include an applicant's
me, date of birth, race, sex, and a flag indicating approval for
rchase. The data base could be updated continuously for subse-
ent disqualifying convictions. Once individuals received ap-
oval, no additional searches of their criminal history files would
conducted for subsequent purchases. This option could elimi-
te the need for a Certificate to Purchase.

States constructed this data base, the number of name searches
d print searches could be significantly reduced. Fears that such a
a base would create a list of gun purchasers could be allayed by
quiring States to systematically purge records after a 2 or 3 year
riod. Moreover, such a data base could be limited to those who
led the telephone check and then passed the secondary verifica-
n; thus, only a small portion of all gun purchasers would be
cluded.

Point-of-sale approval requirements could be relaxed for certain
pes of dealers. Low-volume dealers and those selling at gun
ows could be exempted from the telephone checks. However, to
gulate purchases of firearms from these dealers, State law en-
rcement agencies could be required to perform random criminal

history checks on those who have purchased firearms from these low-volume dealers.

5. Fingerprint searches in the secondary verification process could be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. Applicants found to have out-of-State rap sheets would be required to appeal to the State repositories maintaining the disqualifying records. This modification would have two good effects: (a) a reduction of response time for secondary verification, and (b) no need to evaluate out-of-State records. However, a major disadvantage is that once a hit is made through NCIC, the burden of certifying qualification to purchase would be shifted to the applicant.

6. To increase reliability, applicants for specific types of guns could be required to be fingerprinted and would not be eligible for a telephone check.

7. To ensure that excess delay in making an eligibility decision did not unduly interfere with the rights of qualified purchasers, the system could include firm deadlines for governmental action at various stages. Failure to meet a deadline would allow the sale to proceed. Ineligible purchasers would still be subject to subsequent prosecution.

8. In the event of a computer system failure or interruption in telecommunications, gun dealers could be permitted to proceed with the sale. Once system functions were resumed, dealers would be required to conduct the telephone checks. If an illegal purchase had been made, the State agency accessing the repository data would notify law enforcement agencies. Alternatively, firearm sales could be postponed until the computer and telecommunications systems were again operational or until a specified period of time had elapsed.

See also the discussion of establishing a data base of ineligible persons in Part I.

ption A1: Terminal access by gun dealer disqualifying information

Option A1

his option is a variant of Option A, described above, but instead the gun dealer calling a law enforcement agency, which would ccess criminal history records electronically, the dealer would di- ctly access an intermediary computer that would review the in- exes and transmit "accept" or "reject" notices to the dealer. The ystem would work as follows:

1. The applicant would present the same identification documents the dealer as required under Option A.

2. The dealer would use a terminal in the shop to access an inter- ediary computer that would review criminal history indexes and nsmit authorization or denial notices to the gun dealer's terminal. pecial passwords would be required to prevent unauthorized ac- ss. Transaction logs would be maintained by the State or NCIC monitor inquiries.)

3. If the notice was to "accept," the sale could be completed imme- ately. If the notice was to "reject" (indicating the existence of a intable offense), the applicant would be directed to a local police partment to initiate the secondary verification process.

4. Subsequent procedures follow Option A.

dvantages and disadvantages

l advantages and disadvantages noted in Option A apply to this tion except as follows:

- The costs for installation of a terminal in each dealership would substantial. Training would also be required in the use and intenance of the terminals. Procedures for passwords and logs uld also be required.
- Access through an intermediary computer would require a new mputer capability at the Federal level and in each of the 50 ates. Such a capability could be costly.

3. There would be no noticeable reduction in response times, since telephone checks under Option A would also be completed on a real-time basis.

Estimated cost

See discussion under Option A2.

ption A2: Touch-tone telephone access
Option y gun dealer to disqualifying information

his option is the same as Option A1 above, but substitutes a uch-tone telephone for terminal access. The system would work follows:

1. The applicant would provide identification to the dealer as quired under Option A.

2. Using a touch-tone telephone and a toll-free number, the dealer ould access an intermediary computer, as in Option A1, and would ter his license number to prove eligibility. The communications stem would establish a log of the transaction. The dealer would en enter the applicant's digitized name and other identifiers.

3. The message would be received by the State repository or NCIC d checked against a master name index.

4. The dealer would be advised of the "accept" or "reject" status ly.

5. If rejected, the applicant would be advised to seek secondary rification through a local police department. Subsequent proceres would follow Option A.

dvantages and disadvantages

e advantages and disadvantages would also be similar to those Options A and A1; however, the costs may be lower than Opn A1 since terminals would not have to be installed at all dealers.

timated cost

hough Options A1 and A2 do not present any particular operanal advantages over the simpler Option A, they would be more mplicated and costly to set up. Thus, in the short term they do have any benefits over Option A. Nonetheless, it is possible t by directly and electronically connecting gun dealers to disalifying information, Options A1 and A2, or others like them, uld prove less expensive in the long run than Option A with its d for numerous new personnel in the State repositories to field calls from gun dealers.

Option A3: Live scan of fingerprints by gun dealer

This option differs from other variants of Option A in that fingerprints would be taken directly at the point of sale and digitized for transmission to the record repository. Records would be scanned on the basis of fingerprints. The system would work as follows:

1. The applicant would place his hands into a fingerprint scanner, which would be maintained and operated by the dealer.

2. Digitized fingerprint data on all 10 fingers would be transmitted to the State repository.

3. At the State repository, a fingerprint technician would calculate the pattern types of the 10 fingers and then select a subfile of the data base for a subsequent automated search. Fingerprints would be checked against a criminal history data base, a fingerprint index, or a specially created data base of disqualified persons.

4. If the search resulted in a list of potential candidates, a fingerprint technician would examine the candidate prints and make a determination of identification.

5. Based on the search, an "accept" or "reject" message would be sent to the gun shop. Fingerprints of accepted applicants would not be retained by the State identification bureau.

6. If a rejection was based on a check against a fingerprint index only, the applicant would be advised to initiate secondary verification. If a rejection was based on a full record check or check against a special disqualification data base, the denial would be final, but the applicant would be advised of appeal procedures.

Additional characteristics

1. Dealers would be required to install 10-finger scanning equipment including a capability to transmit the scan data to the State repository and the ability to receive "accept" or "reject" messages from the repository.

2. States would need: (a) the capability of receiving the 10-finger scan data, (b) fingerprint technicians to determine pattern types and

ubfiles to be searched, (c) the ability to search files based on pat-
rn type and digitized minutiae, (d) the ability to compare appli-
Option ant prints to candidate file-prints and determine identification, and Option A3
e) the ability to transmit results to the dealer.

. In order to check for out-of-State arrests, the system would re-
uire the FBI to set up a mechanism for receiving digitized finger-
rint data from State repositories, which currently use several
compatible AFIS systems.

. Response times would include an estimated 6 minutes to scan
0 fingers at the shop, 1-6 minutes for a technician to classify
he prints, and 1 minute to verify a match from the search file. An
dditional 5-15 minutes would likely be required to search the fin-
erprint file (depending on the search procedures, the size of the
ata base, and the availability of computer equipment). This is an
stimated total of 13-28 minutes.

dvantages and disadvantages

. Use of fingerprints ensures accuracy of identification at the gun
hop. In a properly functioning system, no one who had previously
een fingerprinted for a crime would escape detection.

. There would be a substantial reduction in the number of sec-
ndary verifications, perhaps as much as 50-80% over Option A.

. A major disadvantage is the extremely high cost of developing,
stalling, and maintaining on-site equipment and transmission
nes. Training for dealers would also be required to obtain prop-
ly scanned fingerprints. High-volume dealers would require mul-
ple scanners and additional staff.

. Indexes to Federal and State criminal history files would have to
upgraded and made compatible with fingerprint data transmitted
om the on-site scanners. At a minimum, indexes to current crimi-
l history files would require upgrading.

. Response times (13-28 minutes) would be longer than the tele-
one check of the basic Option A.

Estimated cost

Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving live fingerprint scan at all dealers, total start-up costs are estimated at $9.6-27.1 billion and annual operating costs (assuming equipment depreciation and maintenance) at $3.0-8.3 billion. For a system restricting live scan to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated $3.5-9.6 billion and annual operating costs would be $1.2-3.1 billion.

Option A4: Biometric identification card

Optio

Option A4

This option is not so much an alternative to the basic Option A as a distinct feature that could be added to it. The system requires that the applicant obtain a State-issued identification card that incorporates biometric information, name, date of birth, and other standard identifiers. This card could be a general-purpose card, such as a driver's license, or a special-purpose card for gun purchases. The biometric information could be an actual fingerprint on the card, or it could be a digitized representation of biometric information magnetically encoded on the card. This option also requires that dealers have equipment able to read the applicant's fingerprints, or other biometric information, and compare them against characteristics on the card. The system would work as follows:

1. The applicant would obtain a card from the State with biometric identifiers.

2. The applicant would present the card to the dealer. The dealer would then use equipment to compare the biometric data from the applicant with the information on the card.

3. If there was a match, the dealer would proceed with an inquiry to the State repository either (a) by telephone, as in Option A, or (b) if the card was in a digitized format, through a device that could communicate with an external database over telephone lines (as is used in approving credit card purchases).

4. The remaining procedures follow Option A.

Advantages and disadvantages

The use of biometric information on the ID card and the subsequent biometric check at the gun shop would enhance the reliability of the identification check by making it substantially more difficult for such an identification document to be counterfeited or altered. However, other technologies also exist, such as holograms, to enhance the security of identification documents. Moreover, the biometric card does not solve the problem of individuals using fraudulent "breeder" documents, such as birth certificates, to obtain the biometric ID card.

2. Prior recording of biometric identification data on the card eliminates the need for transmission of biometric data from the dealer to the central facility.

3. On-site equipment to check biometric data at the point of sale would be expensive to install, maintain, and operate. Dealers would have to be trained.

4. Interstate coordination, perhaps requiring the collection and maintenance of fingerprints for all applicants, would be necessary to prevent applicants from obtaining separate ID cards in different States using different names. This would be important since subsequent inquiries to State or NCIC data bases would be based on name rather than fingerprints.

5. Biometrically supported identification could be used to link the dealer with data bases of other ineligible firearm purchasers, such as those dishonorably discharged from the Armed Forces.

6. Regulations would have to be issued to govern action by dealers if applicants were discovered to be using false identification (for example, where an applicant's fingerprints did not match data on the card).

Estimated cost

The following cost estimates do not include any costs associated with producing and distributing a biometric identification card.

For a system involving a biometric check at all dealers, total start-up costs are estimated at $198-368 million and annual operating costs at $102-168 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated $93-158 million and annual operating costs would be $70-105 million.

Part II. Options for a felon identification system

Section 3. Prior approval systems

Option B: Firearm Owner's Identification (FOID) Card

Option B

Each State would develop a system for issuing a Firearms Owner's Identification (FOID) Card, which would be required for purchasing any firearm and would be valid for up to 3 years from the date of issue. This system, which would be quite similar to the secondary verification of Option A, would have the following requirements:

System description (Exhibit 3)

1. Prior to purchase of a firearm, each applicant would be required to appear at a law enforcement agency within the jurisdiction of the applicant's legal residence.

2. Each applicant would be fingerprinted and photographed, and the fingerprint cards and photograph would be submitted to the State criminal history repository and to the FBI's Identification Division for a fingerprint check.

3. Results from the FBI fingerprint check would be returned to the designated State agency for evaluation.

4. Additional records could be obtained directly from other State repositories or from courts or prosecutors' offices, as described in the discussion of the secondary verification procedures of Option A.

5. State officials would evaluate the records from all sources to determine whether the applicant was eligible to purchase a firearm. The designated State agency would issue a FOID card or Notice of Denial. The State agency would maintain a data base on all FOID cards.

6. If a Notice of Denial was issued, the applicant would be informed of the right to appeal.

7. The State agency would periodically issue to all gun dealers a listing of all invalid FOID cards.

8. If the applicant possessed a FOID card and wished to purchase a firearm, the gun dealer would be required to verify, prior to sale, the identity of the purchaser and the validity of the card. The applicant would fill out an application for purchase, which would require an additional piece of identification. The gun dealer would check the listing of invalid FOID cards.

9. If the sale was denied, the gun dealer would instruct the applicant on the procedures for an appeal. The gun dealer would send a copy of the application to the appeals agency.

Data sources

Fingerprint searches would utilize all existing criminal history data bases at the State and Federal levels. Manual as well as automated files would be searched. Approval of an application for a FOID card would not require an immediate search for out-of-State records; consequently, the AIS-III index would not have to be modified (as in Option A). Searches of records on individuals who were arrested before 1974 would utilize the current procedures of the FBI's Identification Division.

A FOID card data base would be maintained by the State identification bureau or designated State agency. This data base would contain basic information on applicants who had previously received a card. It would contain the applicant's name, date of birth, race, sex, other identifying information, and the FOID card number and expiration date. The data base could be regularly updated by the State identification bureau for subsequent disqualifying convictions if fingerprint data or State identification numbers were retained for all persons receiving a FOID card. The State agency would issue on a regular basis lists of invalid FOID cards. Unless the applicant elected to renew the FOID card, the data base would be purged of all applicant information after the expiration date.

Verification and controls

Gun dealers would be required to maintain copies of all applications and the purchaser's FOID card number. Gun dealers would be subject to State or Federal audits. Dealers would be subject to criminal penalties for false records of sale and to loss of license for incomplete records.

ccess to criminal history records would be restricted to law
nforcement agencies.

Opti

Option B

a card holder became prohibited from purchasing firearms after
e FOID card had been issued, a Letter of Revocation would be
nt by the State agency to the individual. The State agency would
e required to send all gun dealers a listing of invalid FOID cards.
o attempt would be made to recall invalid cards or firearms.

ositive identification

ositive identification of applicants by gun dealers could be
hanced by placing the applicant's picture and fingerprint on the
OID card. Requiring the applicant to provide at least one addi-
nal document with a picture identification would provide further
nfirmation of identity by the gun dealer.

curity provisions could be introduced to the FOID card, which
uld increase the difficulty and costs of counterfeiting. States
uld also be encouraged to develop better procedures for issuing
eder documents and securing existing cards (such as driver's li-
nses) from counterfeiting.

applicant's fingerprint could also be placed on the BATF appli-
tion (form 4473, Exhibit 5) at the time of purchase. This require-
nt would not only enhance BATF's ability to prosecute
plicants who provide false information but also serve as a deter-
t to individuals with false documents who may be reluctant to
ovide a fingerprint.

t-of-State sales

e sales of firearms to out-of-State residents either at a gun shop
through the mail is currently restricted by Federal law to long
ns (e.g., rifles and shotguns). With few exceptions, interstate
es of handguns are prohibited. Under Option B applicants pos-
sing a FOID card issued in one State would be permitted to pur-
se a long gun in another State; however, *applicants could only
ain FOID cards in their State of residence.*

ee procedures may be adopted to check qualifications of out-of-
te purchasers: (a) dealers may be required to call a national toll-
e number for a check of NCIC files or a national list of invalid
ID cards; (b) dealers may be required to call the State agency
issued the FOID card; or (c) out-of-State residents may be

required to obtain a Certificate to Purchase from a local law enforcement agency.

The first procedure would require the nonresident applicant to fill out the BATF application and present the out-of-State FOID card plus another photo-identification card to the dealer. The dealer would be required to call a national center, which would conduct a name and date-of-birth search of State and Federal files through NCIC. The dealer would receive a message of acceptance or denial. If the sale was denied, the applicant would be advised of the right to appeal; however, all appeals would be conducted within the applicant's State of residence.

The second procedure for sales to nonresidents would require the dealer to call the State agency that issued the FOID card. All dealers would receive a listing of phone numbers of State agencies that issue FOID cards. Special security provisions (such as call-back procedures, dealer codes, and variable passwords) would be established in each State to verify the identity of the out-of-State dealers.

The third procedure would require that nonresident applicants obtain a Certificate to Purchase from a local law enforcement agency within the State of purchase. Prior to purchase of a long gun, the applicant would submit the out-of-State FOID card and other identification documents to a local law enforcement agency; a name and date-of-birth check of NCIC files would be conducted; if the applicant had no prior disqualifying record, the applicant would be issued a Certificate to Purchase. The certificate would be valid for 1 month.

Identifying felons

The problems of interpreting criminal history records are the same as those discussed in Option A. Accurate interpretation of in-State, out-of-State, and Federal records, though difficult, could be achieved given sufficient resources and time.

Response times

The fingerprint search procedures (including mail handling) and evaluation of records would require under current practice an estimated 4-6 weeks. (See Option A for details on how response times are estimated for the equivalent secondary verification procedure.)

Some reduction in the average response time could be achieved if State fingerprint searches produced evidence of disqualifying convictions or yielded an FBI number before the results of the FBI fingerprint check were received. In the former case the applicant would be disqualified on the basis of the State records alone; in the latter case the FBI number could be used to do an immediate query of Federal and out-of-State records through NCIC.

Option B

Expected number of cards issued annually

The proposed FOID card would be required of all purchasers of firearms. Unlike the current system in Illinois (see Part IV, Section 2), FOID cards would not be required of current owners or those wishing to buy ammunition. Start-up of the proposed FOID card system would begin with new buyers only.

Data on FOID card applications in the State of Illinois provide some basis for estimating the number of cards to be issued nationwide under Option B. Nearly 200,000 FOID cards are issued annually in Illinois. Relative to the resident population age 18 or older in Illinois (8.5 million), this figure represents a rate of 2.4 cards per 100 adult residents. If this rate were applied to all adult residents in the United States, the expected number of cards issued annually would exceed 4.2 million in 1990. A FOID card valid for only 3 years, instead of 5 years in Illinois, would generate a larger estimate—nearly 6 million cards issued yearly.

Because the proposed FOID card system for the Nation is restricted to firearm purchases only (and excludes requirements for possession of a firearm or purchase of ammunition), the annual number of cards issued should be somewhat less than the 6 million, based on projections from the Illinois system. However, based on figures from Option A, an estimated 6 million individuals buy the 7.5 million firearms sold annually. Consequently, in the first year of start-up, the estimated number of FOID cards issued cannot be less than 1 million. Once the system has been implemented, the number of cards issued annually should diminish. Though no data exist on the number of repeat buyers from year to year, if we estimate that about a sixth of buyers in any one year purchased a firearm in the previous year, then the estimated number of cards issued annually would approach 5 million in the long run.

Current practices of the District of Columbia and the 22 States that conduct a pre- or post-purchase criminal history check would reduce the net impact of Option B by approximately 8%. As a result,

the total projected increase in fingerprint cards at the State and Federal levels would be approximately 5.5 million in the first year and 4.6 million in subsequent years.

The resultant number of fingerprint checks at the FBI would represent more than a doubling of civil (applicant) fingerprint cards (from the current figure of 4 million cards). Overall, the FOID card procedure would increase the total number of fingerprint cards submitted to the FBI's Identification Division from 8.4 million to 13.0 million—an increase of approximately 55%.

Impact

1. *Purchasers*: Individuals without criminal records would not have the immediate ability to purchase a firearm. Those without criminal records would be required to have fingerprints taken by a law enforcement agency and be required to wait an estimated 4-6 weeks to obtain a FOID card. Once a purchaser possessed a card, there would be no additional waiting period during the time the card was valid.

2. *Dealers*: Little additional burden would be placed on gun dealers. Gun dealers would not be required to place any calls to law enforcement agencies for clearance prior to a sale. Dealers would be required to enter the FOID card number on each application form and review the lists of invalid FOID cards prior to each sale. Dealers would not perceive a loss of sales as a result of buyers being rejected in the shop at time of sale.

3. *State law enforcement*: States would experience a substantial increase in work load. Local law enforcement agencies would process additional paperwork and fingerprint cards. In the long run, the number of fingerprint cards would increase on average by 55% in each of the State identification bureaus. States would also need to establish an administrative staff to coordinate processing of appeals, to conduct system audits, and to coordinate audits of gun dealers.

4. *FBI Identification Division*: The FBI's work load would dramatically increase. Based on the long-term projection of 5 million fingerprint cards submitted annually, as many as 1,700 additional employees may be needed by the Identification Division. Approximately 550 of these employees would hold technical positions (e.g., fingerprint technicians, classifiers, and verifiers) and 520 would be typists; all of these would require an estimated 3-6

Option B

months of training. The FBI would need several years to recruit and clear these 1,700 new employees, assuming this is even possible. Moreover, it would require an additional 31,000 square feet of office space.

Option B

Costs

The annual operating cost at the State and local level is estimated to be between $71 million and $91 million. (For detailed cost estimates, see Exhibit 6 and *Estimates of Start-up and Operational Costs of Systems for Identifying Felons Who Attempt to Purchase Firearms*, Fisher-Orsagh Associates, June 1989.) State and local law enforcement agencies would also require an estimated $72 million for start-up costs.

At the Federal level the estimated cost for processing the anticipated 5 million fingerprint cards a year is $65-70 million, and the cost for start-up is $77-81 million.

Overall, when local, State, and Federal costs are combined, the estimated annual operating cost for Option B is $136-161 million, and the estimated start-up cost is $148-153 million.

If the annual operating costs were transferred to applicants through user fees, a fee of $27.28-32.39 per FOID card application would be required to cover local, State, and Federal costs.

Note that if current fingerprint checks for gun purchasers are taken into account, the actual new costs may be slightly lower than these estimates — perhaps 5% lower for start-up costs and 8% lower for annual operating costs.

Advantages

The system would utilize existing data sources, communications systems, and search procedures.

Access to criminal history records would be limited to law enforcement agencies. Gun dealers would receive only a listing of valid card numbers.

Positive identification for those with a criminal history record would be established at the time of application for the FOID card (like Option A, an estimated 6-8% of the individual applicants

would not be falsely rejected and suffer potential embarrassment at the gun shop because they had a name and date of birth similar to that of someone with a criminal record.

4. Use of the FOID card would make purchase of firearms more convenient by eliminating point-of-sale criminal history checks. Only one criminal history check would be required in a 3-year period regardless of the number of firearms purchased.

5. This system would be much less burdensome to the gun dealer than the point-of-sale options.

6. FOID cards would be State based, and their use could be restricted to the purchase of firearms only. Individuals would be required to possess a FOID card at the time of purchase but not for subsequent transport, possession, or use of firearms.

See also the discussion in Part I of establishing a data base of ineligible persons.

Disadvantages

1. Individuals without criminal records would not have the immediate ability to purchase a firearm and would be required to have fingerprints taken by a law enforcement agency. The processing of applications for FOID cards could take approximately 4-6 weeks. There may also be public resistance to systematic fingerprinting of all firearm purchasers.

2. Fingerprint searches are slow and costly and place heavy demands on State and Federal repositories, which are having difficulties with current work loads.

3. A State FOID card system would create a list of all persons with valid cards. Though essential to verification and prevention of forgery and fraud, the creation of such a list may be controversial. (Strict limitations could be placed on access to the FOID card data bases in each of the States. Uses of the data bases for any purpose other than verifying the validity of FOID cards could be restricted by State or Federal statute. Establishment of a national data base of FOID cards or out-of-State access to State-level data bases could be prohibited.)

Potential modifications

Option

1. Fingerprint searches may be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. In order to accomplish this, the AIS-III index would have to be expanded to include individuals arrested before 1974. State repositories would assemble Federal and out-of-State records from automated and manual FBI files plus additional records obtained from NCIC. This modification would substantially reduce the FBI's burden in conducting fingerprint checks while increasing its burden in providing manual records in response to NCIC inquiries. The net effect could be a reduction in burden to the FBI. This modification in Option B would also potentially reduce response times and system costs. A major disadvantage would be decreased reliability in searches of Federal and out-of-State records since name searches of automated records are less reliable than fingerprint-based searches.

Option B

2. A notarized statement of eligibility from an applicant could be substituted for fingerprint checks (similar to procedures in Illinois). Fingerprint checks would not be performed. Verification and control procedures could be introduced through random criminal history checks conducted by State identification bureaus. Criminal sanctions could be imposed on individuals who falsify information on the application form. State repositories and Federal officials would be given authority to conduct audits, to revoke FOID cards, and to impose criminal sanctions on fraudulent applicants.

Major advantages of this modification would include: (a) the burdens on State and Federal repositories would be reduced; (b) the burden on applicants would be limited to obtaining a notarized statement; and (c) response time from application to issuance of card could be reduced from the 4-6 weeks in Option B. The major disadvantage would be an increased potential for fraud by disqualified applicants.

3. Fingerprints could be required only for the initial issuance of the FOID card. Renewals could be based on a name and date-of-birth search only. As a result of this modification, the annual number of fingerprint searches could be reduced by about a third.

4. The FBI Identification Division could build a "stop file." Applicant print cards could be added to the existing criminal files or to a special FOID card file. State identification bureaus could then be notified by the FBI when a FOID card holder was subsequently

convicted of a disqualifying offense. As a result of this modification, FOID cards would not have to be restricted to a 3-year term; consequently, the number of fingerprint cards sent to the State and the FBI would be reduced. Major disadvantages of this procedure would include: (a) a substantial increase in the number of noncriminal fingerprint cards retained by the FBI and (b) increased fears that such a data base would create a Federal list of gun owners and that it could be used for other criminal justice or investigative purposes.

5. The proposed system could be modified so that FOID cards would be required only of purchasers of specific types of guns.

Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer

This option is a variant of the preapproval system described in Option B. In this variation gun buyers would be fingerprinted by local law enforcement; State and Federal criminal history files would be electronically checked by the local law enforcement agency; individuals would be notified of the results while at the law enforcement agency; if approved, individuals would be issued a FOID card; if rejected, individuals would be advised of appeal procedures. The system would work as follows:

1. The applicant would go to a designated law enforcement agency to obtain a FOID card.

2. The applicant would place all 10 fingers into a fingerprint scanner, which would be maintained and operated by the local law enforcement agency.

3. Digitized fingerprint data would be transmitted to the State identification bureau.

4. At the State identification bureau, a fingerprint technician would calculate the pattern type, which would identify the subfile of the State fingerprint data base. The subfile would then be searched for potential matches.

5. If the search resulted in a list of potential matches, a fingerprint technician would examine the prints and determine identity.

6. If a match was found, a technician at the State identification bureau would inspect the criminal record for disqualifying convictions. If the applicant was disqualified, the local law enforcement agency would be immediately notified and the applicant would receive a Notice of Denial.

7. If a match was not found in the State files (or if the applicant had no disqualifying convictions), the digitized fingerprints, pattern types, and other identifying information would be transmitted by the State identification bureau to the FBI. The FBI would subsequently conduct an electronic search of the national fingerprint files, master name index, and criminal history files.

8. If a match was found in the FBI files, the State identification bureau would receive (by NLETS) copies of the automated records and (by mail) copies of the manual records. If automated, the State would evaluate the records and transmit results to local law enforcement. If manual, the State would notify the law enforcement agency that a record was found and that the applicant could return within 7 work days to receive a FOID card or Notice of Denial.

9. If an applicant was issued a FOID card, the State identification bureau would retain a copy of the applicant's fingerprints. A print of either the thumb or index finger would be imprinted on the FOID card.

10. At the gun shop, purchasers would present the card to the dealer. The dealer would then use equipment to scan the applicant's fingerprint (one print). The equipment would compare the applicant's print to the print on the FOID card.

11. The dealer would call the State identification bureau. The FOID card data base would be examined to determine whether the person in the gun shop was the same person who applied for the card, whether the card had been reported lost or stolen or had expired, or whether the person had been subsequently convicted of a felony.

12. The dealer would receive notice of approval or denial of sale from the State identification bureau. As a result of a denial, applicants would be advised of appeal procedures.

Advantages and disadvantages

1. Advantages include: (a) shorter response time to obtain a permit—a majority of applicants could, within an hour, receive a valid FOID card from local law enforcement; (b) the ability to increase the reliability of identification at the gun shop; (c) the ability to identify FOID cards as lost, stolen, lapsed, or disqualified; and (d) the enhancement of automated fingerprint processing for all law enforcement purposes.

2. Disadvantages include: (a) the high costs of start-up and operations; (b) the requirement for equipment and software that are currently being tested or yet to be developed; (c) the need for modifying existing State and Federal data bases to interface with digitized fingerprint information; (d) the incompatibility of the existing AFIS systems, currently produced by four different vendors, with

Option B1

each other and with the FBI; (e) additional automation of State indexes and criminal history files; (f) public resistance to a data base that identified all FOID card holders; (g) significant increased burden on local law enforcement agencies; and (h) the need for additional fingerprint technicians and record evaluators at State identification bureaus.

Option B1

Estimated costs

Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving a biometric check at all dealers, total start-up costs are estimated at $344-572 million and annual operating costs at $203-295 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs could be an estimated $239-362 million and annual operating costs would be $171-232 million.

Option B2: Smart card containing disqualifying information

In this variation of a preapproval system, everyone would carry a card (e.g., a driver's license) that would have electronically imprinted identification information, including biometric data such as fingerprints. Whenever someone became legally disqualified to purchase a firearm (for example, by being convicted of a felony), the card would be updated to contain this information. Anyone attempting to buy a firearm would have to produce the card. The card would be put into a reader that would indicate whether the carrier was prohibited from purchasing firearms.

Advantages and disadvantages

1. The major advantage is that this procedure would not require a communications system — the disqualifying information would be on the card itself.

2. A major disadvantage is the cost of implementing such a radically new identification system and providing criminal justice agencies with the facilities to update these cards.

3. There may be substantial public resistance to the requirement to carry such a card, especially since the need for interstate coordination may require the creation of biometric data bases for the Nation's adult population.

Estimated costs

Sufficient information does not currently exist to make reliable cost estimates of this novel and far-reaching option.

Part II. Options for a felon identification system
Section 4. Appeal procedures

The appeals process commences at the point that the applicant receives final notice that the sale has been denied and has been notified of the reasons for denial. This may occur after "secondary verification" (Option A) or after denial of a firearm owner's identification (FOID) card (Option B). As described in both options, fingerprint checks against State and Federal data bases would have been completed prior to final denial and initiation of the appeal period.

During the appeal, the applicant may challenge the denial on grounds that the data are inaccurate (e.g., an acquittal was recorded as a conviction); that the record is incomplete (e.g., a subsequent pardon was not recorded in the data base); or that the offense does not represent a disqualifying offense under the Federal or State standards. Challenges based on inaccurate identification would not occur at the appeals stage since fingerprint checks prior to denial would, presumably, catch errors of this type. The appeals process would proceed as follows:

1. Following final denial, the applicant is advised of rights to appeal and given a document to initiate the appeal.

2. The applicant would go to the agency designated to handle appeals (or would submit documents to a nonlocal appeals agency).

3. The applicant would be provided a copy of the criminal history record that was used as the basis for disqualification.

4. The applicant would indicate the basis for the appeal. The appeals agency would assist the applicant either directly or indirectly by providing names, addresses, or telephone numbers for inquiries to in-State or out-of-State agencies.

5. If errors could not be corrected on the spot or by telephone, the applicant would obtain and submit to the appeals agency documents supporting eligibility (for example, court records of acquittal, pardon, or restoration of rights).

6. The appeals agency would then review the documentation and rule on the appeal. If eligibility was established, the individual would receive a FOID card or Certificate to Purchase.

7. If eligibility was denied, the applicant would be advised of rights to a court challenge.

Additional considerations

1. The agency (or agencies) assigned responsibility for appeals must be determined. The agency could be the decision agency (State or Federal), a local agency, or a separate entity (State or Federal). Although the latter option would provide an independent review, the decision agency would probably be more familiar with the criminal history records. Local agencies would best serve as a conduit to the official appeals agency rather than as the agency responsible to rule on the appeal.

2. The degree of formality for the appeal must be determined. For example, a separate "Board" could be established, or alternatively, an existing unit within an agency could be designated.

3. Procedures for applicant assistance must be developed. In particular, procedures regarding challenges based on out-of-State records should be developed and coordinated on a national basis.

4. The time for the appeal and decisions may have to be limited.

5. Some States may consider their existing procedures for correcting or updating criminal history records as adequate for a felon identification system.

Part III. Legal and policy issues

Statutory and constitutional challenges may be expected to arise regarding the creation of any of the felon identification systems described in this report. (See *Legal and Policy Issues Relating to Biometric Identification Technologies*, SEARCH Group, Inc., June 1989.) Issues related to the First, Second, Fourth, Fifth, Ninth, and Fourteenth amendments to the Constitution, perhaps among others, must be carefully considered. In particular, some organizations take the position that certain types of felon identification systems may, to some degree, unconstitutionally infringe upon the "right of the people to keep and bear arms." This position relies primarily on (1) the imposition that presale checks would impose on non-criminals, (2) the limited deterrence value of any system given the small proportion of felons purchasing firearms through retail outlets, (3) the potential infringement of rights arising from the maintenance of a gun owner register, and (4) the requirements of some systems that prospective purchasers provide fingerprints prior to purchase. In light of the significance of constitutional issues, a final selection of any particular identification system ought to be preceded by a rigorous legal review by appropriate divisions within the U.S. Department of Justice.

The legal review conducted for the Task Force found that criminal history checks, including those based on fingerprints, are currently required by State and Federal law for a variety of non-criminal-justice purposes such as job applications and security clearances. Depending on the jurisdiction, such checks are conducted for those desiring to be lawyers, child care workers, State or Federal employees, bartenders, etc. Although the courts have generally upheld these requirements as rationally related to legitimate governmental purposes, a felon identification system involving the screening, and possibly fingerprinting, of all gun purchasers may raise unresolved constitutional issues.

In addition to constitutional issues, the use of felon identification systems in firearm sales raises a variety of important legal and policy issues that may have to be addressed in State and Federal legislation. Some of the major issues are outlined here.

A Federal or State system; mandatory or voluntary?

There are four broad possibilities for implementing a felon identification system: (1) to create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different ways; and (4) to offer the States several models for a voluntary cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system for the simple reason that 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential for an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal Government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal Government would select a felon identification system and each State would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States. Such a mandate could be enforced by making State cooperation a condition for the receipt of specified Federal funds or, more directly, for the sale of firearms within the State (under the Federal authority over interstate commerce).

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia currently conduct a prepurchase criminal history check for those who wish to buy handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records

when conducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from federally licensed dealers are covered; and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal Government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal Government would expand its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

Sources of funding for criminal history checks

The Federal Government will be required to invest substantial resources in national data bases, including both personnel and equipment, in order to handle the increase in workload that would result from a felon identification system for firearm sales. State repositories also will require substantial additional resources to handle the work load increase and to continue to improve data quality. Given these resource needs, policymakers will have to determine the appropriate funding mechanism for carrying out the required criminal history checks. Such funding mechanisms could include one or more of the following: (1) direct appropriations by the Federal and State governments, (2) user fees by gun purchasers, (3) increases in firearm dealers' licensing fees through the Bureau of Alcohol, Tobacco and Firearms, and (4) special fines imposed on those convicted of firearms violations. In addition, legislation would have to address whether the State and Federal governments would share any revenue generated by a felon identification system and in what proportion.

Release of criminal history information to gun dealers

The Task Force has not proposed any options that would give gun dealers direct access to criminal history record information. Such

access would violate established standards of privacy and confidentiality as well as numerous State statutes that preclude access to criminal history records by non-law enforcement personnel. Nonetheless, several of the options do require notification to the dealer that a criminal history check has turned up evidence of an arrest for a felony or serious misdemeanor. Even this limited provision of information may violate some State statutes or regulations.

Under Option A and its variants, for example, the dealer would learn whether there was evidence that the prospective purchaser had a criminal history record, but the dealer would not learn the substance of the record itself. This may be viewed by some as a release of criminal history information to non-law enforcement personnel in a way that would embarrass or stigmatize the prospective purchaser. Indeed, in many (perhaps most) cases an initial indication of a criminal record would eventually be shown to be untrue because it resulted from a misidentification with someone else with a common name and date of birth. Yet a "hit" on the initial telephone check will be known to personnel at the gun store and perhaps to customers or others who are present. As a result, the purchaser's reputation within his community may be harmed through no fault of his own. This issue indicates the need for legislative prohibitions on the release by gun dealers and others of anything learned during the telephone check of purchasers, although it may be difficult to enforce such prohibitions against customers or others who may overhear or observe the results of a "hit" during the telephone check.

An important privacy consideration is whether gun dealers in a point-of-sale system would keep the records or lists of those who failed the initial check. Operationally, as in the options described in this report, such recordkeeping is not necessary and could be prohibited by law.

Note that under Option B and its variants the prospective purchaser has already completed a full-fledged criminal history check before going to the gun dealer. Thus, the gun dealer only sees those who have previously qualified to purchase a firearm. He does not learn about those who failed the pre-approval procedure. Only in the few cases where the purchaser had been arrested between issuance of the FOID card and his attempt to purchase a firearm would any disqualifying information become known to the gun dealer.

Another issue of relevance to gun dealers is whether or to what extent their liability ought to be limited by law for providing firearms to disqualified persons on the basis of inaccurate information they received from law enforcement authorities.

The issue of accuracy

The Congressional mandate under Section 6213 of the Anti-Drug Abuse Act calls for the "accurate identification of felons" who attempt to purchase firearms. The statute, however, does not specify the level of accuracy that would be acceptable. Since, for the reasons elaborated earlier in this report, a perfectly accurate system is not feasible in the foreseeable future, policymakers will have to decide how much accuracy is required for an effective felon identification system. Generally speaking, the most accurate systems are those that are the most expensive and that create the greatest inconvenience for the gun purchaser.

The issue of accuracy has two sides: (1) to correctly identify felons who attempt to purchase firearms and (2) not to reject eligible persons who attempt to purchase firearms. Deficiencies in identification documents for positively establishing identity, incomplete criminal history records, and the prevalence of common names and dates of birth complicate these two tasks and make it that much more difficult to achieve both simultaneously. A system, for example, that focused primarily on not rejecting eligible persons might prove incapable of correctly identifying a large number of felons. On the other hand, a system that single-mindedly sought to keep convicted felons from purchasing firearms might catch in its nets numerous law-abiding individuals who have a right to purchase firearms. How the balance is to be struck between these two goals — to correctly identify felons and not to reject eligible persons — is a policy, not a technical, judgment. The options outlined in this report present a variety of schemes for meeting the two sides of the accuracy mandate.

Because criminal history records are subject to error, the dictate for an accurate system points to the need for mechanisms through which prospective gun purchasers can update and correct criminal history information. Fortunately, such procedures currently exist in all the States. Any felon identification system for firearm sales ought to have a linkage to these procedures so that corrections to criminal history records can be made in a timely fashion. Otherwise, persons eligible to purchase firearms may be improperly prohibited from doing so.

The requirements for establishing an accurate felon identification system highlight the need for complete and up-to-date criminal history records, preferably in an automated format. Improvements in the accuracy of criminal history records would generate benefits in a wide range of criminal justice applications.

Creating a data base of firearm purchasers

None of the options outlined in this report provide for or require the creation of a national data base of firearm purchasers. Since all the options are essentially State run, any recordkeeping, whether manual or automated, regarding the application to purchase, or the actual purchase of, firearms would be maintained at the State level, as is currently the case in the States that now require a written application and criminal history check for firearm purchases.

Operationally, the maintenance of computer inquiry logs — transaction records that do not necessarily require the applicant's name — is necessary to measure system traffic and cost and to ensure that inquiries are made only by legitimate dealers for legitimate purposes. In addition, any pre-approval system (such as Option B and its variants and the secondary verification of Option A) must maintain records of successful applicants if the system is to have the capability of revoking permits (or FOID cards) if a holder is convicted of a disqualifying felony. This could apply under systems that require the return of a revoked permit and under those in which dealers check the validity of a permit prior to sale.

The development of a data base of gun purchase applicants raises the possibility that such records might be used for other purposes. For example, individuals included in such a data base might be treated as possible suspects in crimes involving firearms. If fingerprint data were included in the file, latent fingerprints might be routinely run against the data base.

Policymakers, of course, could prohibit such use of applicant records through law. Moreover, strict limits could be placed on the time during which records of firearm applicants were maintained and on the extent to which applicant names would appear on transaction logs. In point-of-sale systems, time limits could be placed on the retention of initial inquiry records which do not result in a "hit." Pre-approval systems, however, have greater recordkeeping requirements if the possibility of revoking permits is to be maintained. It may be advisable to enact new statutory provisions to ensure that record retention restrictions are enforced.

Potential "tracking" of firearm purchasers

Any system that requires a criminal history record check prior to purchase of a firearm creates the potential for the automated tracking of individuals who seek to purchase firearms. It would be possible, for example, for authorities to "flag" the names of specific individuals, perhaps suspects in criminal cases, who might seek approval to purchase a firearm. If an automated criminal history check was conducted on such a flagged individual as part of an application to purchase a firearm, an electronic message to this effect could be sent to the interested law enforcement agency without the knowledge of the applicant. In this way authorities could learn about the potential purchase of a firearm by someone under investigation or surveillance as well as the geographic location of the purchaser.

Policymakers will have to decide whether to prohibit all such tracking activity or to permit it in some circumstances (for example, notifying the Secret Service when a person suspected of being a threat to the President purchases a firearm). If some tracking is to be permitted, then clear rules and conditions for such activity will have to be established.

Issuing documents authorizing firearm purchases

The pre-approval options outlined here (Option B and its variants) require the issuance of some kind of documentation (FOID card, certificate to purchase, permit, etc.) for the prospective gun purchaser to present to the gun dealer certifying that the purchaser is not a convicted felon. Moreover, the point-of-sale options (Option A and its variants) have a similar requirement for those who fail on the original telephone check.

Such a requirement, especially if mandated by Federal law, raises policy issues regarding whether the firearm purchaser ought to be singled out and forced to prove through documentation that he is not a convicted felon before he can engage in an otherwise lawful commercial activity. In addition to the inconvenience that such a requirement creates, it may be viewed as demeaning by some.

The other policy issue that such a requirement for documentation presents is that this may be interpretated as an initial step toward a national identification card, something that members of Congress and others have strongly opposed in the past. It should be noted, however, that there are several important differences between a na-

tional ID card system and the kinds of documentation required in the options in this report. As usually conceived, a national ID card would be an identification document that was issued to all adult Americans and which had to be carried at all times; yet neither of these conditions would apply to the kind of documentation discussed in this report. FOID cards or firearm purchase permits would be required only for those who wish to purchase firearms and would have to be carried only at the time of purchase. Legislation could prohibit the use of such cards for unrelated identification purposes.

The use of biometric data

Many of the options detailed in this report require the collection of biometric data in the form of fingerprints at some stage in the approval process. Given the traditional association of fingerprints with law enforcement, there may be public resistance to the requirement to provide fingerprints at a law enforcement agency or at a gun dealership in order to purchase a firearm. Such concern may be heightened if the fingerprints are kept on file, manually or electronically, and are subsequently used for unrelated investigative purposes, criminal or otherwise. As noted earlier, such use of the fingerprints provided in a felon identification system could be prohibited by law.

Other biometric technologies, such as retinal scans, could be introduced into felon identification systems, especially to verify identity against a biometrically-based identification card. Because some of these technologies might be perceived as physically more intrusive than fingerprints, public opposition to their use may be greater than to the use of fingerprints. On the other hand, this may be counterbalanced by the fact that these newer technologies are not as closely associated with law enforcement activities as fingerprints.

Part IV. Supplementary materials

Section 1. Relevant Federal statutes

Anti-Drug Abuse Act of 1988, P.L. 100-690, Sec. 6213, 102 Stat. 4360 (1988), as codified in 18 U.S.C. Sec. 922 note (1989)

Identification of Felons and Other Persons Ineligible to Purchase Handguns.

(a) **Identification of Felons Ineligible to Purchase Handguns.** — The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

(b) **Report to Congress.** — Not later than 1 year after the date of the enactment of this Act, the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

(c) **Additional Study of Other Persons Ineligible to Purchase Firearms.** — The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

(d) Definitions. — As used in this section, the terms "firearm" and "dealer" shall have the meanings given such terms in section 921(a) of title 18, United States Code.

Gun Control Act of 1968, 18 U.S.C. Sec. 921 et. seq., as amended by the Firearms Owners Protection Act, P.L. 99-308, 100 Stat. 449 (1986).

921 (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include —

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

922 (d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person —

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

5) who, being an alien, is illegally or unlawfully in the United States;

6) who has been discharged from the Armed Forces under dishonorable conditions; or

7) who, having been a citizen of the United States, has renounced his citizenship. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

922 (g) it shall be unlawful for any person —

1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

2) who is a fugitive from justice;

3) [who] is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

5) who, being an alien, is illegally or unlawfully in the United States;

6) who has been discharged from the Armed Forces under dishonorable conditions; or

7) who, having been a citizen of the United States, has renounced his citizenship; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Part IV. Supplementary materials

Section 2. Current practices

Federal control of firearms

The Federal role in the control of firearms is derived primarily from the Gun Control Act of 1968 as amended and is overseen at the National level by the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury. BATF has over 40 field offices and 500 field agents used for the control of firearms, alcohol, and tobacco; over half of the agents are devoted to firearms control. There are approximately 270,000 federally licensed firearm dealers. It is estimated that 60-70% are noncommercial dealers (hobbyists, collectors, etc.) and account for 20-25% of all sales of firearms. Primary control is maintained through the licensing of dealers and the recording of sales.

Prospective dealers apply for a license through BATF. Ordinary dealers pay a fee of $10 a year; pawnbrokers pay $25 a year; and gun dealers who sell "destructive devices" may be required to pay a fee of up to $1,000 a year. Licenses are issued for 3 years after inquiry and investigation has determined that the applicant is legally qualified. Disqualification can be made if the applicant is under 21 years of age, has previously violated the laws and regulations governing firearms, or is ineligible to possess a firearm under Federal law. This license may be renewed, but may not be transferred if the business is sold. There are a variety of regulations that affect licensees; and licenses may be suspended or revoked for cause.

Retail firearm sales require the completion of BATF form 4473 (Exhibit 5) for each over-the-counter sale or transfer to an end user. This form requires the prospective owner's name, address, date and place of birth, height, weight, and race. It also requires a certification that the prospective buyer is not prohibited from owning a firearm because of a prior felony conviction or because he is in one of the several other categories of persons who are precluded from ownership by Federal law — including, among others, those dishonorably discharged from the Armed Forces, habitual drug users, and those who have been committed to a mental institution. The type and serial numbers of any weapons purchased are also recorded. The dealer is required to see appropriate identification from the prospective owner, such as a State driver's license, and must make a note of the method of identification on the BATF form 4473. There are stiff criminal penalties for false statements on the form — up to 5 years in prison.

Records relating to firearm transactions must be retained on the premises of the dealer for a period of 20 years. If the dealership is sold, the records be must transferred upon issuance of a new license. If the dealer goes out of business without a successor, the records of transactions must be shipped to BATF's long-term storage facility in Landover, Md. BATF agents may enter gun dealers' facilities and inspect any or all of the records that are required to be maintained by Federal law. These examinations are constrained by the law, which spells out in some detail the conditions (frequency and purpose) under which such investigations may be made. As an example, in the event of a crime involving a firearm, BATF secures a description of the weapon, including the serial number, and traces it from the manufacturer or importer through the distributor to the retail dealer where the records of sale are examined in an effort to trace the weapon to the owner of record.

Because of limitations in manpower, BATF agents concentrate their examination of records on high-volume retail stores, dealers who are suspected of illegal gun sales, and other individuals who come to the attention of the agents through other sources. In their examination of these records, the agents are especially alert to the sale of two or more handguns to the same purchaser within 3 days. Other causes for suspicion include sales to suspected gang members or sales of high-powered weapons to suspected "straw purchasers," those buying guns for others who are ineligible. If an inspection is not satisfactory, BATF (1) may note the problem and reinspect in about 3 months, (2) notify the dealer that his license is in jeopardy if corrective actions are not taken, (3) take other administrative action, or (4) initiate criminal proceedings.

State practices regarding firearm sales

Currently, 20 States and the District of Columbia, covering 55% of the Nation's population, conduct a criminal history check of persons desiring to purchase a handgun prior to allowing that person to take possession of the weapon (Exhibit 7). Four of these States and D.C. include the purchase of long guns in this requirement. In 10 States and D.C. the burden of responsibility for prepurchase criminal history checks falls solely on local law enforcement agencies (either the police or sheriffs' department); in five States this responsibility is solely that of a State agency; and in another five States agencies at both State and local levels conduct criminal history checks prior to purchase.

The levels of criminal history information accessed in these checks vary among the States. Eight States access files no higher than those maintained at the State level; 12 States and D.C. access national criminal history records.

In most States this criminal history check is done using name, date of birth, and other identifying characteristics such as race and sex, but excluding fingerprints. In six States and D.C. fingerprints are taken from the applicant for use in the criminal history check. In one of these States only a thumbprint is obtained.

The criminal history check is conducted as part of an application process involving a mandatory waiting period. In 15 States this application process and waiting period are required for each handgun purchase (a permit is obtained through this process in four of these States). In six States a successful application for purchase of handguns results in a permit or identification card which allows purchases for a specified or indefinite time period. In the four States and D.C. that require criminal history checks for the purchase of long guns, a successful application results in an identification card, permit, or registration certificate.

In some instances, a criminal history check is conducted after the purchaser of a handgun has taken possession of the weapon. In Pennsylvania, a postpurchase check is conducted by the State agency (in addition to a prepurchase check conducted locally). Two States (Michigan and South Carolina) conduct a criminal history check on handgun purchasers only after the buyer has taken

possession of the weapon. In Michigan this check is done by the local agency, and in South Carolina it is done by the State agency.

State residents making their initial purchase of a handgun in the 20 States and D.C. conducting a pre-purchase criminal history check are subject to waiting periods ranging from 2 days to 6 months (Exhibit 8). The two States that conduct only a postpurchase criminal history check on handgun purchasers have no waiting period. One State (Wisconsin) requires a 2-day waiting period for handguns, but does not conduct a criminal history check on the purchasers of handguns. The waiting periods for the purchase of long guns in the four States and D.C. that require a criminal history check for such purchases range from 15 to 60 days. Local jurisdictions in many States may have additional restrictions or requirements for the purchase of handguns and long guns.

Application requirements for firearm purchases in the 10 largest States (as of April 1989)

California (pop. 28,074,000)
A written application is required to purchase a handgun. This is submitted by the firearm dealer to the State Department of Justice. Purchaser must wait 15 days before taking possession. Within this 15-day period, the application may be rejected based on the results of name check done against State criminal history files. Eventually, but not necessarily during the 15-day waiting period, the State DOJ conducts a name check against NCIC.

New York (pop. 17,755,000)
A written application is required for the purchase of handguns. This is made to the city or county licensing officer (usually the Police Commissioner or Sheriff). Purchaser pays for gun, then takes receipt and application for permit to local law enforcement agency where fingerprints are taken. Application materials are forwarded to the State Division of Justice Services for State records check and FBI check. Approval must be granted for purchaser to take possession of gun. Processing of application takes up to 6 months. The applicant must complete firearms safety and training course during this time. When the processing is complete, the local law enforcement agency informs the Superior Court Judge who issues the permit. If the application is denied, applicant receives a refund from the dealer. An application for permit is required for possession and purchase of all firearms in New York City.

Texas (pop. 17,192,000)
No written application process is mandated by State law.

Florida (pop. 12,249,000)
No written application process is mandated by State law.

Pennsylvania (pop. 11,860,000)
A written application is required for handguns. Within 6 hours, the firearms dealer forwards this application to local Chief of Police or Sheriff. There is a 48-hour waiting period. The local law enforcement official may block the sale during this time. A copy of the application is forwarded to the State Police within 7 days. The State Police conduct a name check against their criminal history files, but generally this is done after the purchaser has taken possession of the weapon. If they get a "hit," a field investigation is initiated.

Illinois (pop. 11,584,000)
A written application must be submitted to the State Police to obtain a Firearm Owner's Identification Card which is required for purchase of firearms. Application is checked against State and Federal criminal history files. If ID card is issued, it is valid for 5 years or until owner becomes prohibited from firearms possession. Waiting periods of 72 hours for handguns and 24 hours for long guns are in effect. Only pre-registered handguns are allowed in Chicago; no new handguns may be brought into the city.

Ohio (pop. 10,779,000)
The written application mandated by State law pertains only to firearms designed for military use; however, some local jurisdictions have enacted stricter legislation. Among major cities, a permit to purchase is required for any firearm in Cleveland, Columbus, Dayton, and Toledo, and a Handgun Identification Card is required for the purchase of handguns in Cleveland, Dayton, and Toledo.

Michigan (pop. 9,231,000)
The Michigan License to Purchase is required for all handgun purchases. This is obtained at the local police agency. Upon purchase, the seller documents the sale on the application and forwards copies to the local police agency and the Department of State Police. The local police are responsible for conducting State and Federal criminal history checks. No waiting period has been established. In
Detroit a permit is required for all firearms purchases.

New Jersey (pop. 7,756,000)
A firearm identification card is required to purchase rifles, shotguns, and handguns. This card is valid until holder becomes prohibited from possessing firearms. A written application to the local Chief of Police is required. Fingerprints must be submitted with the application. Applications are sent to State Police for NCIC check and additional investigation. In reality, the processing time for applications is 6-10 weeks (somewhat longer than the time stated in the law). The local law enforcement agency receives the results and issues or denies the card or permit. An applicant may appeal a denial to the Superior Court of the County in which he resides.

North Carolina (pop. 6,512,000)
A permit is required for the purchase of a handgun. Written application is made to the local Sheriff. There is up to a 30-day waiting period for approval. The Sheriff conducts a name check against the State criminal history files. The Sheriff decides on the basis of this check (and any of his own information) whether to accept or reject the application.

Note: All population figures are for 1988.

tary materials
ices

r's identification card

gislature enacted the Firearm Owner's Identi-
vides "a system of identifying persons who
quire or possess firearms and firearm ammu-
of Illinois." The Act provides for the is-
vner's Identification (FOID) cards to persons
or possess firearms or ammunition.

Act are administered by the Illinois State Po-
mits a notarized card application form (with
State Police. The applicant must indicate

n convicted of a felony;

in a mental institution within the preceding

otics; or

d.

cation may occur for affirmative responses to
r perjured responses.

plication, a criminal history check is con-
e index search through both the Illinois and
y records systems. An additional check is
inois Department of Mental Health and Dis-
ination that the applicant is not an ineligible
s issued with a 5-year expiration date.

jected may appeal to the Chief of the Identifi-
llinois State Police for an administrative hear-
and must, by personal appearance, present
n to support a reconsideration. Subsequent
through the State Court.

n that a FOID cardholder has become ineli-
a felony conviction), the card is revoked and
e card is requested. The revocation is noted
istory files. If the card is not returned volun-
ed by the local police.

opy available pages tightly bound

Illinois authorities report that approximately 200,000 FOID cards are issued annually. An estimated 78% of all cards are issued with the first application; the final rejection rate is about 5%. Illinois officials also report that 2,470 individuals were denied a FOID card in 1988 as a consequence of their felony convictions. During the same year, 779 FOID cardholders had their cards revoked as a result of felony convictions.

The Illinois State Police have noted three problem areas for administration of the program:

1. the identification procedures used do not insure a positive identification;

2. court notification of disposition of felony charges for inclusion in criminal history records has not been accurate or timely; and,

3. private mental health institutions are not required to share information for the record check.

Virginia's new point-of-sale approval system

The following is a summary of procedures being established to implement the recently enacted Virginia statute requiring felony checks for persons wanting to purchase firearms within the State. The legislation was enacted by both houses of the Virginia legislature in February 1989 and was signed by the Governor in April 1989. The system is to be implemented by November 1, 1989. All information was obtained from the Virginia Department of State Police.

The statute applies to:

1. handguns with a barrel of less than 5 inches, and

2. semiautomatic center fire rifles or pistols that expel projectiles by action of an explosion, have a magazine that holds more than 20 rounds of ammunition, and are designed by the manufacturer to accommodate silencers, bayonets, bipods, flash suppressors, or folding stock

Procedures for implementation

1. The purchaser presents two pieces of ID to the dealer.

2. The dealer calls the State Police using a toll-free telephone number. (The system will operate 7 days a week from 8 AM to 10 PM. The Records Management Division estimates that they will receive 250,000 inquiries a year).

3. The dealer identifies himself by giving his firearm dealer ID number and the control number from the State firearm purchaser's application form.

4. The State checks the validity of the ID number and confirms that the control number has been assigned to that dealer. (This is designed to prevent invalid inquiries. A microcomputer system is being developed that will contain dealer identification information and list the control numbers assigned to each dealer.)

5. The dealer provides the State Police with the applicant's name, sex, race, date of birth, and Social Security number.

6. While the dealer remains on the phone, the State Police make a name check against the State index to criminal history records and the State and Federal "wanted persons" lists. A name, sex, race, and date-of-birth match will be required to make a "hit." Virginia estimated that 16-20% of the telephone inquiries will result in a "hit." The total time for a phone call is expected to be about 3 minutes.

7. If there is a hit against the State index, the dealer is advised that the sale cannot be completed. State Police then have until the dealer's next close of business day to determine if the applicant was actually convicted of a disqualifying felony. During this time, checks will be made against the State criminal history records, and the Interstate Identification Index (III). If no record is found within this time, the dealer is advised that the sale may proceed. If a disqualifying felony is found, the dealer is advised that the sale may not proceed. The dealer then forwards a copy of the State application form to the State Police to permit cross checking of the control number and an appeal by the applicant.

8. If the sale is approved, the application form (with the dealer's control number) is completed and forwarded to the State Police. A check is then made to verify the data.

9. If there is no "hit" against the State index in the initial inquiry, the dealer is advised that the sale may proceed immediately. The State application form containing the control number is then forwarded to the State Police. The form will have been signed by the applicant attesting to the absence of any disqualifying felonies and providing consent for a criminal history records check. Upon receipt of the application form, a check is initiated against State and Federal criminal history records. If a disqualifying felony record is found, this information and a copy of the application form is forwarded to the dealer and to the chief law enforcement official in the jurisdiction in which the sale was made. It is anticipated that the law enforcement official will issue an arrest warrant and initiate efforts to retrieve the firearm.

10. Appeals are based on the applicant's general right to inspect and correct his record. In general, applicants will be directed to the local police department who may take fingerprints to support the record check. (The State does not require a fingerprint check.) The applicant would also be advised of any out-of-State records and would be assisted in contacting out-of-State officials.

11. The system described above applies to Virginia residents only. Out-of-State residents will undergo a similar process, including a criminal history records check, which may take up to 10 days to complete.

Maintenance of records

If the applicant is approved, a record of the inquiry transaction (including the applicant's name) will be maintained in an active file for 30 days.

If the applicant is disapproved, a log of the inquiry will be maintained for a 2-year period. The applicant has 30 days to appeal the denial under existing State law (Virginia Code 9-192) regarding completeness of criminal history records.

Estimated cost

Virginia officials estimate that this system will require 16 new full-time personnel and will cost $481,000 for 12 months operation ($90,000 for start-up costs and $391,000 for annual operating costs). This will cover staff, space, forms, communications, and equipment.

Differences between the Virginia system and Option A

1. The Virginia system applies only to specific categories of firearms and may be further limited to selected categories of dealers.

2. In the Virginia system Federal and interstate criminal history records are not checked prior to sale unless there is a "hit" against the State index. Under Option A, a check is automatically made against State and Federal records.

3. Virginia checks do not require a personal appearance at a law enforcement agency until the final appeal. Under Option A, the secondary verification on which a disapproval is based is supported by a fingerprint check.

4. The Virginia system has strict deadlines for government action, which are not included in the basic Option A.

Part IV. Supplementary materials

Section 3. Access to Federal criminal history records

Through both its Identification Division and the National Crime Information Center (NCIC), the FBI serves as a central access point for Federal and State criminal history record information. The Identification Division maintains fingerprint-based criminal history records on approximately 25 million individuals who have been arrested at some time in their lives for a serious offense (felony or serious misdemeanor). These records are described below. In addition, the FBI operates the Interstate Identification Index (III), accessed through the NCIC telecommunications network, which notifies law enforcement agencies requesting criminal history information whether a record exists in one of the 20 States (listed below) that currently participate in III. The III is a cooperative Federal-State program for the interstate exchange of criminal history record information that makes available in a timely manner criminal history information to the law enforcement community.

III participating States maintain their own computerized criminal history (CCH) files at the State level and provide information from these files when a request comes either through the NCIC network or directly to the State through the National Law Enforcement Telecommunications System (NLETS). Most States that do not participate in III also maintain automated CCH systems, but these are not directly tied into the NCIC system. These data, if automated, can be accessed by a direct request through NLETS. In addition, when a request comes in to the FBI through NCIC, it provides whatever automated data it has in its Identification Division from nonparticipating States.

In order to provide rapid access to these State and Federal criminal history files, the FBI maintains an automated master name index (MNI) of over 12.5 million records, with over 70,000 new records being added each month. An index record contains an individual's name, aliases, physical description, identifying numbers, fingerprint classification, and the location(s) of the criminal history record(s).

Criminal history records, sometimes call "rap sheets," are cumulative, name-indexed histories of an individual's involvement in the criminal justice system for serious offenses (felonies and serious misdemeanors). Excluded are records on arrests and subsequent dispositions for such offenses as drunkenness, vagrancy, disturbing the peace, and traffic violations (except manslaughter, driving under the influence of alcohol or drugs, and hit-and-run). Offenses committed by juvenile offenders are excluded unless a juvenile is tried as an adult.

Access to these Federal data bases and indexes is through the NCIC system. The NCIC computer equipment is located at FBI headquarters in Washington, D.C. Connecting terminals are located throughout the United States, Canada, Puerto Rico, and the U.S. Virgin Islands in police departments, sheriff's offices, State police facilities, Federal law enforcement agencies, and other criminal justice agencies. The system includes 37,000 terminals in 17,000 locations and provides uninterrupted service 24 hours a day, 7 days a week. Over 130 dedicated telecommunications lines link Federal and State agencies together. Each State maintains a central Control Terminal Agency (CTA), which is directly connected to NCIC. Telecommunications lines and equipment within the State provide State and local criminal justice agencies access to the control terminal.

The NCIC system provides direct, electronic access to the Interstate Identification Index of records maintained in the 20 participating States and to the Identification Division's automated records. This combined index is now known as the Automated Information System-Phase III (AIS-III). Moreover, NCIC maintains several national "hot files." These hot files contain identifying information concerning wanted and missing persons, stolen vehicles, and identifiable stolen property of several types.

In addition to the computerized AIS-III MNI, the Identification Division maintains three criminal history files designed for use by Federal and State agencies:

1. An automated criminal history file which contains rap sheet information on 12.5 million persons arrested for the first time and reported to the FBI since July 1, 1974, or known to the FBI with a year of birth 1956 or later.

2. Manual criminal history records on approximately 8.8 million individuals born in or after 1929 but arrested at some time before July 1, 1974. There is an automated master name index to these data, but it is available only for in-house use and not through the NCIC network. The manual rap sheet jackets are maintained at various locations in the Washington, D.C. area. Several of the options detailed above require merging the index for these records into the AIS-III index.

3. Manual criminal history records on about 3.6 million offenders born before 1929 whose files are maintained by the Identification Division. There is no automated index to this older information.

In general, indexes at the Federal level are arrest-based files containing only identifying information on individuals arrested for "fingerprintable" offenses. See Exhibit 4 for an overview of these indexes and data bases.

An authorized criminal justice agency can make an inquiry (a QH message) on name, sex, race, date of birth, and numeric identifiers such as Social Security Number, State Identification Number (SID), or FBI number. Most initial searches are on name, sex, race, and date of birth, if known. In response to a QH inquiry, the requester will be provided one of the following responses:

1. A single matching record response — a "hit."

2. A multiple matching response, up to a maximum of 15 records — a "hit."

3. A "no record" response — a "no hit."

A "no hit" response does not necessarily mean that there is no criminal history record on the individual being investigated. The FBI Identification Division maintains fingerprints on approximately 25 million persons (21 million automated). Of these, about half, 12.5 million, are contained in the AIS-III MNI, discussed above. In order to access the information in the additional records maintained by the FBI, a law enforcement agency can submit a fingerprint card, usually through the mail, to the Identification Division for a more detailed search. Additionally, there may be criminal history information at the local or State level for which the arrest fingerprint card was never forwarded to the FBI.

As indicated above, a positive response to an NCIC inquiry (called a QH response) can result in either a single record response (one individual) or a multiple record response (up to 15 individuals). The response provides the requester with three types of information:

1. The person's name, including aliases, physical descriptors, and numerical identifiers.

2. The identity of the data base(s) containing the criminal history record information.

3. The means to be used to obtain the record(s).

In order to retrieve a specific criminal history, a criminal history

record request (QR message) containing the person's FBI or SID number must be used. The identifiers are obtained from the name-based QH inquiry or from other sources such as State CCH records or investigative files. The QR message will result in an automatic notification to all data bases identified as having information on the subject being investigated. The CCH systems of the States participating in III will be queried and the individual's rap sheet from one or more III States will automatically be forwarded via NLETS. FBI records on Federal offenders and nonparticipating III States will be sent on-line using NCIC telecommunications.

If the automated name index for the records of the 8.8 million persons born in or after 1929 and arrested before July 1, 1974, is integrated into the AIS-III index, then under the initial verification procedure proposed in Option A (telephone check by the gun dealer), an NCIC inquiry could be conducted within a matter of minutes on approximately 21.3 million individuals who have been arrested for a felony or serious misdemeanor.

The 20 States participating in III as of June 1989:

California	New Jersey
Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Florida	Oregon
Georgia	Pennsylvania
Idaho	South Carolina
Michigan	Texas
Minnesota	Virginia
Missouri	Wyoming

Part IV. Supplementary materials

Section 4. Study of other persons ineligible to purchase firearms

Section 6213(c) of the Anti-Drug Abuse Act of 1988 requires the Attorney General to conduct a feasibility study to determine whether an effective method can be established for identifying "other persons" ineligible to purchase firearms (that is, other than convicted felons). Such persons include: fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to a mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have renounced their American citizenship. This study must be submitted to Congress by May 18, 1990.

The Task Force decided that this parallel activity ought to be initiated by a private contractor with expertise in criminal justice and information systems. In July of this year the Bureau of Justice Statistics contracted with Enforth Corporation of Cambridge, Massachusetts to carry out this work. The Enforth study will include the following elements:

- the availability of existing data bases that can be utilized to identify ineligible individuals;

- the quality of these data bases in terms of completeness and accuracy of records;

- the remote accessibility of the data bases through a telecommunications system, particularly, the method and cost of access;

- legal restrictions on the use of the data and an analysis of the relevant privacy and confidentiality considerations of accessing such data; and

- the feasibility of linking these data bases with a felon identification system.

Part V. Exhibits

1. Felon identification system for firearm sales
Schematic overview 96

2. Option A: Telephone check by gun dealer
Immediate verification 97

3. Option A: Secondary verification
Option B: Prior approval 98

4. National access to criminal history data 99

5. Firearms transaction record, BATF form 4473 100

6. Estimated costs for felon identification options 106

7. States requiring criminal history checks
for firearm sales 107

8. Maximum waiting periods required for initial
firearm purchase by a State resident 108

Felon identification system for firearm sales

Schematic overview

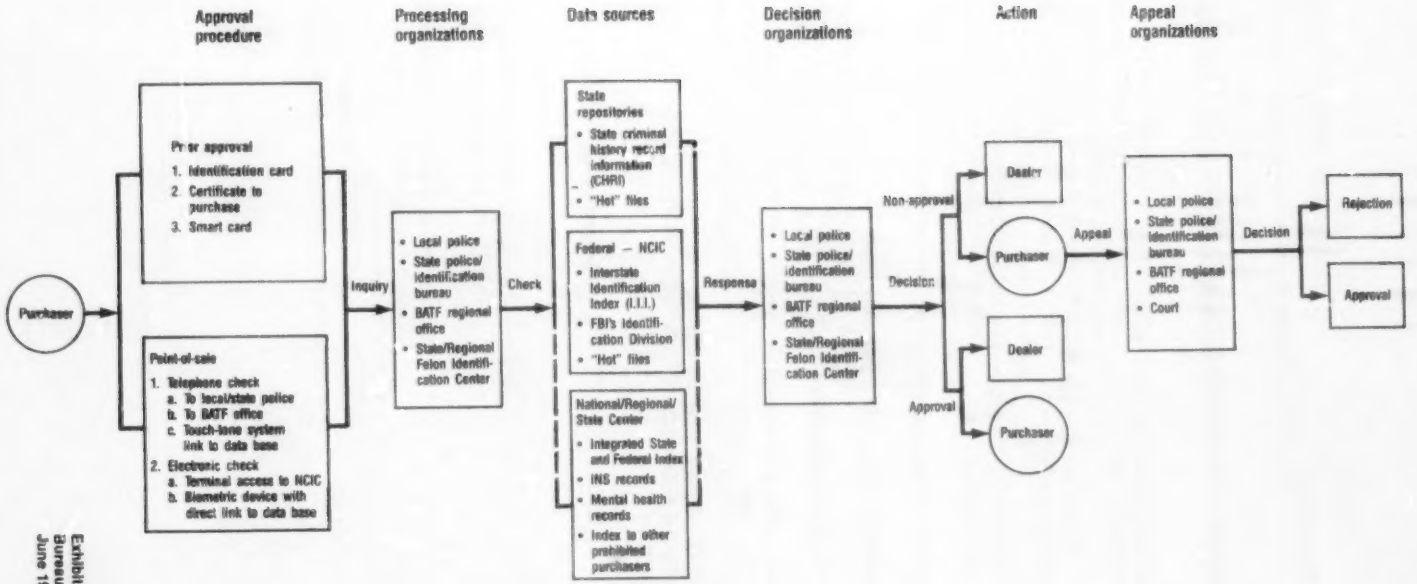


Exhibit 1
Bureau of Justice Statistics
June 1989

Immediate verification

Exhibit 2
Bureau of Justice Statistics
June 1989

Option A: Secondary verification

Option B: Prior approval

Exhibit 3
Bureau of Justice
June 1989

National access to criminal history data

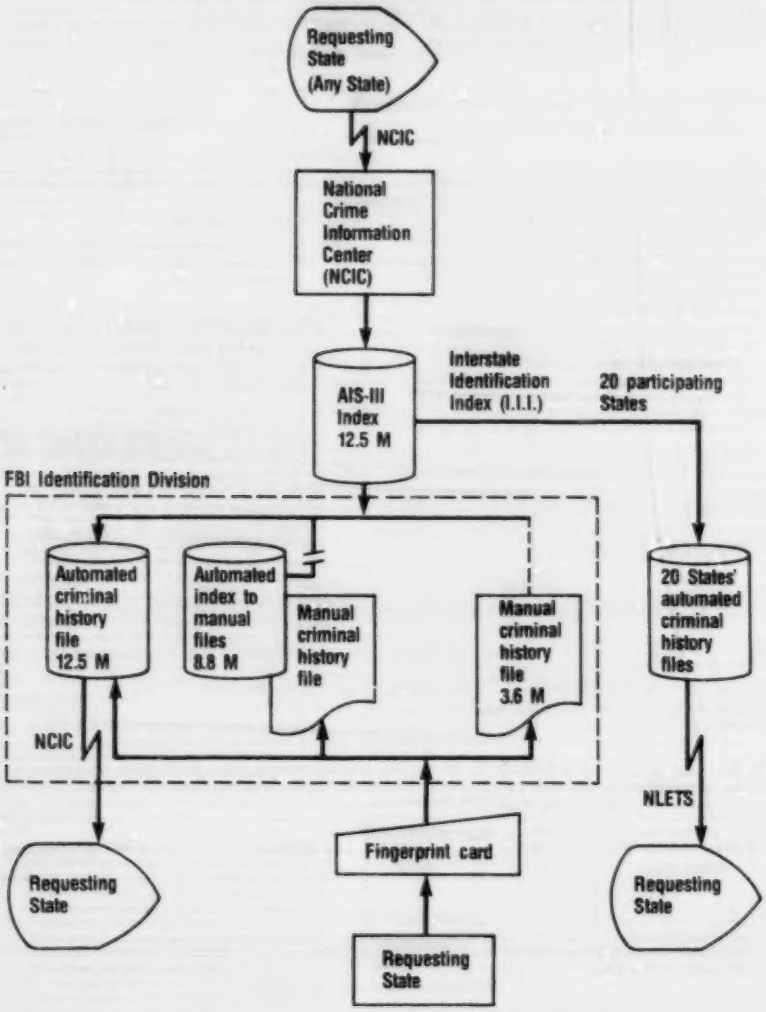


Exhibit 4
Bureau of Justice Statistics
June 1989

Form Approved: OMB No. 1512-0129 (3/31/91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

FIREARMS TRANSACTION RECORD

PART I — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE *(BUYER) (See Notices and Instructions on reverse)*

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle)* ☐ MALE ☐ FEMALE	2. HEIGHT	3. WEIGHT	4. RACE
5. RESIDENCE ADDRESS *(No., Street, City, County, State, ZIP Code)*	6. DATE OF BIRTH MONTH / DAY / YEAR	7. PLACE OF BIRTH *(City and State or City and Foreign Country)*	

8. CERTIFICATION OF TRANSFEREE *(Buyer)*—An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question.

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? **A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.*		c. Are you a fugitive from justice?	
		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is *not* required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under **dishonorable** conditions?	
		g. Are you an alien **illegally** in the United States?	
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship.	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE	DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) *(See Notices and Instructions on reverse)*

THIS PERSON DESCRIBED IN SECTION A: ☐ IS KNOWN TO ME ☐ HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION *(Driver's license or identification which shows name, date of birth, place of residence, and signature.)*	10. NUMBER ON IDENTIFICATION

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below and on the back to the person identified in Section A.

11. TYPE *(Pistol, Revolver, Rifle, Shotgun, etc.)*	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER *(and importer, if any)*
1.				
2.				

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller)* *(Hand stamp may be used)*	17. FEDERAL FIREARMS LICENSE NO. *(Hand stamp may be used)*

THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 18 THROUGH 20

18. TRANSFEROR'S *(Seller's)* SIGNATURE	19. TRANSFEROR'S TITLE	20. TRANSACTION DA

ATF F 4473 (5300.9) PART I (1-88)

11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER (and importer, if any)
3.				
4.				
5.				
6.				
Complete ATF F 3310.4 for multiple purchases of handguns (See item 10 below)				

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or "straw purchaser" for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearms laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year; by one who is a fugitive from justice; by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance; by one who has been adjudicated mentally defective or has been committed to a mental institution; by one who has been discharged from the Armed Forces under dishonorable conditions; by one who, having been a citizen of the United States, has renounced his citizenship; or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply *if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.*

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

4. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating:

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

8. Additional firearms purchases made by the same buyer may not be added to this form after the seller has signed and dated it.

9. If more than six firearms are involved, the identification required by Section B, items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than six weapons may be on a separate sheet of paper which must be attached to the form covering the transaction.

10. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

11. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

12. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part I part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part I are filed in the same manner.

DEFINITIONS

1. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

3. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

U.S. GPO: 1988-202-924/85126

ATF F 4473 (5300.9 PART I (1-88)

Exhibit 5

Form Approved: OMB No. 1512-0490 (3031/ 91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FIREARMS TRANSACTION RECORD

PART I — LOW VOLUME — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

THIS FORM MAY BE USED ONLY BY DEALERS SELLING OR DISPOSING OF 50 OR LESS FIREARMS PER YEAR (See Instructions On Reverse)

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

1. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)

2. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)

3. FIREARM RECEIVED FROM:
   a. NON LICENSEE (Name & address) OR
   b. LICENSEE (Name & License Number)

4. DATE RECEIVED

5. DESCRIPTION OF FIREARM — MANUFACTURER (and importer, if any)	TYPE (Pistol, Revolver, Rifle, shotgun, etc.)	MODEL	CALIBER OR GAUGE	SERIAL NUMBER

SECTION A — MUST BE COMPLETED PERSONALLY BY NONLICENSED TRANSFEREE (BUYER) (See NOTICE, Instructions on Reverse)

6. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) ☐ MALE ☐ FEMALE

7. HEIGHT

8. WEIGHT

9. RACE

10. RESIDENCE ADDRESS (No., Street, City, State, ZIP Code)

11. DATE OF BIRTH — MONTH | DAY | YEAR

12. PLACE OF BIRTH (City and State or City and Foreign Country)

13. CERTIFICATION OF TRANSFEREE (Buyer) — An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information* in any court for a Crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.

b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).

c. Are you a fugitive from justice?

d. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance.

e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?

f. Have you been discharged from the Armed Forces under dishonorable conditions?

g. Are you an alien illegally in the United States?

h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a felony.

14. TRANSFEREE'S (Buyer's) SIGNATURE

15. DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)

THIS PERSON DESCRIBED IN SECTION A: ☐ IS KNOWN TO ME ☐ HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

16. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature)

17. NUMBER ON IDENTIFICATION

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described to the person identified in Section A.

18. TRANSFEROR'S (Seller's) SIGNATURE

19. DATE

SECTION C — TO BE COMPLETED WHEN THE TRANSFEREE (BUYER) IS A FEDERAL FIREARMS LICENSEE (INCLUDES NON OVER THE COUNTER)

20. ENTER FFL'S NAME AND LICENSE NUMBER	21. TRANSFEROR'S (Seller's) SIGNATURE	22. DATE

ATF F 4473 (5300.24) PART I (LV) (6-88)

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922, 923, and 924.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—the sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or "straw purchaser" for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his/her citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State instead of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

The nonlicensed transferee (buyer) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating:

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance where Section A is completed, complete Section B of the form.

8. The transferor (seller) of a firearm will, in every instance, complete Section C of the form if disposing of a firearm to a transferee (buyer) who is a Federal Firearms Licensee. (Applies to both over the counter and non over the counter transactions between licensed dealers.)

9. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

10. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

11. Each transferor (seller) maintaining firearms acquisition and disposition records pursuant to 27 CFR 178. 124a (Low Volume Dealers) shall retain form 4473-LV, Part I and II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473-LV, Part I and II, reflecting the transferor's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

DEFINITIONS

1. Low volume dealer—A licensed dealer contemplating the disposition of not more than 50 firearms within the succeeding 12-month period. Such 12-month period commences from the date the licensed dealer first records the purchase or acquisition of a firearm on the reverse side of this form. If during the course of the 12 month period, dispositions exceed the 50 firearm limitation, the licensed dealer should begin keeping standard records required in 27 CFR 178 for non low volume dealers.

2. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

3. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

4. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

*U.S.GPO:1988-0-202-928/85721

Form Approved: OMB No. 1512-0130 (05/2001)

DEPARTMENT OF THE TREASURY—BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS
FIREARMS TRANSACTION RECORD
PART II—NON-OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

NOTE: Prepare in duplicate. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A—MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notices and Instructions on reverse)

1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)
☐ MALE ☐ FEMALE

2. HEIGHT | 3. WEIGHT | 4. RACE

5. RESIDENCE ADDRESS (No., Street, City, County State, ZIP Code)

6. DATE OF BIRTH (MONTH / DAY / YEAR)

7. PLACE OF BIRTH (City and State or City and Foreign Country)

8. CERTIFICATION OF TRANSFEREE (Buyer)—An Untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question.

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.

b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).

c. Are you a fugitive from justice?

d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?

e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?

f. Have you been discharged from the Armed Forces under dishonorable conditions?

g. Are you an alien illegally in the United States?

h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?

Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am 21 years or more of age, or that, in the case of a shotgun or rifle, I am 18 years or more of age; that I am not prohibited by the provisions of Chapter 44 of Title 18, United States Code, from receiving a firearm in interstate or foreign commerce, and that my receipt of this firearm will not be in violation of any State of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are:

TITLE | NAME

ADDRESS

I also hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S (Buyer's) SIGNATURE | DATE

SECTION B—MUST BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)

On the basis of (1) the statements in Section A; (2) my notification of the chief law enforcement officer designated above; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm described below to the person identified in Section A.

9. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.) | 10. MODEL | 11. CALIBER OR GAUGE | 12. SERIAL NO.

13. MANUFACTURER (and importer, if any)

14. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)

15. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)

16. TRANSFEROR'S (Seller's) SIGNATURE | 17. TRANSFEROR'S TITLE | 18. TRANSACTION D

ATF F 4473 (5300.9) PART II (1-88)

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 , firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. Warning—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply *if that individual has received a pardon for the crime or the condition has been expunged or set aside or under the law where the condition occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.*

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

1. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

2. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating

   (a) that the firearm is being acquired for the use of and will be the property of that business entity, and
   (b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

1. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

2. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

3. If more than one firearm is involved, the identification required by Section B, Items 9 through 13, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper which must be attached to the form covering the transaction.

4. The transferor (seller) of a firearm in a intrastate non-over-the-counter transaction must forward by registered or certified mail (return receipt requested) the copy of the form to the chief law enforcement officer of the transferee's (buyer's) locality of residence. The transferor must delay shipment or delivery of the firearm for a period of at least 7 days following receipt of the post office notification on the acceptance or non-acceptance of the envelope. The transferor will retain as a part of the records required to be kept by 18 U.S.C. 921-929 the original form with evidence of the receipt or rejection of the notification forwarded to the chief law enforcement officer of the transferee's locality of residence.

5. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929, and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178.

6. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part II part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part II are filed in the same manner.

NOTICE TO LAW ENFORCEMENT OFFICIALS

This copy of ATF Form 4473, Part II, is to advise you of a firearms transaction involving a resident in your jurisdictional area. The firearm described in Section B will not be shipped or delivered to the transferee (buyer) identified in Section A for a period of at least seven days following receipt of the notification of your acceptance or refusal of delivery, by registered or certified mail, of the form.

DEFINITIONS

1. *Non-over-the-Counter Transaction*—A mail-order transaction, or other transaction, where the transferee (buyer) does not appear in person at the transferor's (seller's) premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

★U.S.GPO:1988-0-202-925/60709

Exhibit 5

Part V. Exhibits

Estimated costs for felon identification options
(in millions of dollars)

Options	Total	Federal Government	State and local government	Gun dealer
Startup costs				
Options				
A. Telephone check by gun dealer and secondary verification	$ 36-44	$ 13-17	$ 23-26	---
A3. Live scan of fingerprints by dealer [a]				
(1) All dealers	9,590-27,144	47-51	93	9,450-27,000
(2) Commercial dealers only [b]	3,457-9,636	40-44	92	3,325-9,500
A4. Biometric identification card [c]				
(1) All dealers	198-368	13-17	23-26	162-324
(2) Commercial dealers only [b]	93-158	13-17	23-26	57-114
B. Prior approval — FOID card	148-153	77-81	72	*
B1. Live scan by law enforcement and biometric check by dealer [a]				
(1) All dealers	344-572	77-81	105-167	162-324
(2) Commercial dealers only [d]	239-362	77-81	105-167	57-114
Annual operating costs				
Options				
A. Telephone check by gun dealer and secondary verification	$ 53-70	$ 13-18	$ 40-53	---
A3. Live scan of fingerprints by dealer [a]				
(1) All dealers	3,047-8,347	104-109	108-138	2,835-8,100
(2) Commercial dealers only [b]	1,172-3,063	86-91	98-122	988-2,850
A4. Biometric identification card [c]				
(1) All dealers	102-168	13-18	40-53	49-97
(2) Commercial dealers only [b]	70-105	13-18	40-53	17-34
B. Prior approval — FOID card	136-161	65-70	71-91	*
B1. Live scan by law enforcement and biometric check by dealer [a]				
(1) All dealers	203-295	65-70	89-128	49-97
(2) Commercial dealers only [d]	171-232	65-70	89-128	17-34

Note: Detail may not add to total because of rounding.
--- Unknown.
* Negligible.
[a] Partial estimates only.
[b] Assumes that the non-commercial dealers (an estimated 65% of all dealers) would use the basic option A.
[c] Excludes all costs of producing and distributing the biometric cards.
[d] Assumes that the non-commercial dealers (65% of all dealers) would use basic option B.

Exhibit 6
Bureau of Justice Statistics
June 1989

States requiring criminal history checks for firearm sales as of June 1989

States requiring criminal history checks	Type of firearm	Application required for--	Special requirements	Agency conducting checks	Highest level files examined
Prior to sale:					
Alabama	handguns	purchase		local	State
California	handguns	purchase		State	national
Connecticut	handguns	purchase		local, State	State
District of Columbia	all guns[a]	registration certificate	fingerprints gun law exam	local	national
Hawaii	long guns, handguns	permit (1 year) permit (each sale)	fingerprints	local	national
Illinois	all guns	ID card (5 years)		State	national
Indiana	handguns	license (4 years)	fingerprints	local, State	State
Iowa	handguns	permit (1 year)	fingerprints	local, State	national
Maryland	handguns	purchase		State	national
Massachusetts	all guns	ID card		local, State	national
Minnesota	handguns	permit (1 year)		local	national
Missouri	handguns	permit (each sale)		local	State
New Jersey	long guns	ID card	fingerprints	State	national
	handguns	permit (each sale)			
New York	handguns	permit	fingerprints safety course	State	national
North Carolina	handguns	permit (each sale)		local	State
Oregon	handguns	purchase		local	national
Pennsylvania	handguns	purchase		local, State[b]	State
Rhode Island	handguns	purchase	safety course	local, State	State
South Dakota	handguns	purchase		local	State
Tennessee	handguns	purchase	thumbprint	local	national
Washington	handguns	purchase		local	national
Only after sale:					
Michigan	handguns	license (each sale)	safety inspection	local	national
South Carolina	handguns	purchase		State	State

[a] Only preregistered handguns are allowed in the District of Columbia. No new handguns may be brought into the city.

[b] Criminal history check conducted by the local agency before the sale and by the State agency after the sale.

Exhibit 7
Bureau of Justice Statistics
June 1989

Maximum waiting periods required for initial firearm purchase by a State resident

Handguns		Long guns	
180 days	New York	60 days	District of Columbia
60 days	Indiana	40 days	Massachusetts
40 days	Massachusetts	30 days	Illinois
30 days	Illinois		New Jersey
	New Jersey	15 days	Hawaii
	North Carolina		
15 days	California		
	Hawaii		
	Tennessee		
14 days	Connecticut		
9 days	Missouri		
7 days	Maryland		
	Minnesota		
5 days	Oregon		
	Washington		
3 days	Iowa		
	Rhode Island		
	South Dakota		
2 days	Alabama		
	Pennsylvania		
	Wisconsin		

Exhibit 6
Bureau of Justice Statistics
June 1989

Part VI. Appendix
Summary of comments on the Draft Report

Background

Section 6213 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4360, directed the Attorney General to develop a system for immediate and accurate identification of felons who attempt to purchase firearms and to report to the Congress a description of that system by 18 November 1989. Pursuant to that mandate, the Attorney General requested the Assistant Attorney General of the Office of Justice Programs to establish a Task Force to develop a range of options that would comport with the statute.

On June 26, 1989, the *Draft Report of the Task Force for Identifying Felons Who Attempt to Purchase Firearms* was published in the *Federal Register* (54 Fed. Reg. 26,902 (1989)). This publication solicited comments from interested persons for a 30-day period, though the Task Force group was able to receive, process and analyze a number of comments received thereafter.

Some 114 comments were received in all, including those from Governors and other representatives of 20 State governments plus the District of Columbia and the Territory of Guam (all hereafter referred to as States), from 26 organizations (plus supplemental comments from 2 of them), and from 64 persons, including 4 Members of Congress.

Of the 26 organizations responding other than the State governments, 12 were classified as law enforcement organizations (including 2 municipal police departments), 5 as civil liberties organizations (including 3 firearms rights advocacy groups), 4 as firearms organizations (both sporting and general), 2 as gun control organizations, and 3 as consultants. The following is a section-by-section summary of the 114 comments received on the June 26, 1989, *Federal Register* publication entitled *Draft Report on Systems for Identifying Felons Who Attempt To Purchase Firearms*. Some reader comments resulted in changes that have been incorporated in the Final Report.

The reader should keep in mind that this is, after all, intended to be a general summary, not a summary of each individual comment. An effort has been made to include representative comments from the entire spectrum of opinion.

Just as the Task Force attempted to remain assiduously neutral in preparing a complete and fair description of various alternatives in the *Draft Report*, so too, the compilers of this summary have done their best to employ the same standard of neutrality in preparing this analysis of the comments received.

The Task Force is grateful to all who have submitted comments and is cognizant of the thousands of hours involved in preparing them. As a whole the quality of the comments was outstanding, obviously representing much careful and thoughtful consideration of this difficult problem in American society.

Summary of comments on —

Foreword 110
Part I. Introduction and summary of findings 111
Part II. Options for a felon identification system 116
Section 1. Schematic overview 116
Section 2. Point-of-sale approval systems 116
Option A: Telephone check by gun dealer with secondary verification 116
Option A1: Terminal access by gun dealer to disqualifying information 118
Option A2: Touch-tone telephone access by gun dealer to disqualifying information 118
Option A3: Live scan of fingerprints by gun dealer 118
Option A4: Biometric identification card 118
Section 3. Prior approval systems 119
Option B: Firearm Owner's Identification (FOID) card 119
Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer 120
Option B2: Smart card containing disqualifying information 121
Section 4. Appeal procedures 121
Part III. Legal and policy issues 122
Part IV. Supplementary materials 125
General comments 126

Comments

Foreword

A number of comments, from both groups and individuals, suggested the first step in a project of this nature should be an ambitious, thorough effort to make criminal record histories accurate and complete. Several writers noted this would produce many benefits to the criminal justice system beyond felon identification of firearm purchasers.

One firearms organization felt that the discussion of the point-of-sale vs. pre-approval systems failed to consider developing and enhancing a system to identify and punish felons who traffic in stolen firearms, as well as a dealer notification program.

One of the Congressional parameters set forth in the Anti-Drug Abuse Act of 1988 governing the report of the Task Force was that any system must be "immediate." The Task Force did not report on any system involving a waiting period, or cooling off period as it is sometimes called.

Some groups and individuals, including a Member of Congress, commented that there should be no waiting period. Others favored a waiting period. Times suggested were 5 days, 7 days, 7 or more days, 7 to 10 days, 2 weeks, and 15 days. One individual, a Member of Congress, advocated the immediate implementation of a 7-day national waiting period. One gun control group favored the 15-day waiting period on handguns, but made no waiting period recommendation as to long guns. One Governor, whose State has had a 7-day waiting period of long standing noted that despite the legislative immediacy requirement governing the Task Force Report, he felt that ultimately Congress should provide some type of waiting period to curtail firearms purchases, especially handguns, during the "heat of passion." Another State response (from the State public safety commissioner) preferred Option B, but would add a waiting period.

At the same time, a firearms group asserted that a statement in the Foreword of the *Draft Report* puts the waiting-period myth to rest: Waiting periods considerably shorter than the 4 to 6 weeks required for a fingerprint-based, prior-approval system (such as 7 days) would not significantly enhance the reliability of point-of-sale systems.

Other comments on statements mentioned in the Foreword included an objection raised by a firearms organization to the *Draft Report* observation that felons may obtain the tools of their deadly trade through straw men who lack a criminal record, and therefore may be eligible to purchase firearms for the felon. Rather, the organization said, felons typically obtained weapons through their own crimes or from a fence or other illicit source.

A civil liberties group believed that the options in the *Draft Report* do not further the goals of the Task Force to "preserve legitimate rights to privacy and firearms ownership, while at the same time enhancing the ability of law enforcement to carry out its responsibility to maintain the domestic peace."

Part I.
Introduction and summary of findings

One of the State comments suggested that the degree of danger generated by categories of prohibited purchasers in addition to felons (drug users, mental incompetents, illegal aliens, etc.) is of equal importance and it may be premature to consider systems to prevent firearms from being sold to prohibited purchasers until the May 1990 report on the other groups is published.

Scope of the problem

Several writers noted that elsewhere (in Sec. II) the *Draft Report* cites a study stating that five out of six felons have acquired firearms elsewhere than by retail purchase. They were concerned because the *Draft Report* addresses only retail sales. Typical of these comments was one from a State patrol chief, writing for his State at the request of his Governor, who thought that because so many felons obtained weapons elsewhere, it did not appear to him that the tremendous costs of implementing any system would be cost-effective.

One law enforcement organization wondered what percentage of the completed BATF (Bureau of Alcohol, Tobacco and Firearms) Forms 4473 has been shown to be falsified. A Governor reported that in his State, officials have not identified a problem of felons purchasing firearms from dealers. And one individual writer questioned whether felons ever actually try to buy weapons from licensed gun dealers.

A consulting company whose president is a former Federal official familiar with firearms issues suggested that project cost estimates are greatly inflated by the 60-70% of BATF-licensed dealers who do not in fact depend on the sale of firearms for a significant portion of their income. This writer suggested that BATF remove these pseudo-dealers from the dealer category by using substantially higher license fees or qualifications based on volume of business or by establishing a nondealer license category. This would allow BATF to concentrate its resources more effectively, and thus sharply drop costs related to identification systems. Another individual suggested that BATF recall all licenses that are not being used in a State-, county-, or city-licensed business. And a firearms group suggested it might be possible to exempt entirely or apply a special system to low-volume dealers such as hobbyists. One individual noted that computer systems based on the use of telephone lines would not work at gun shows, where many dealers do much of their business.

Key elements of a felon identification system

On the topic of felon definition, one civil liberties group noted that it is not easy to find a uniform definition of the term felon and that this difficulty should be addressed before either general or specific proposals are considered. Another civil liberties group felt that a major impairment existed because data bases do not show for how long a person convicted of a crime could have been imprisoned, and thus it cannot be determined if the statutory definition of felon (1 year imprisonment or longer) had been met.

A law enforcement group believed that BATF should strongly urge the States to improve their reporting, since it is the responsibility of the States to report felony convictions accurately.

On the issue of immediacy, a firearms organization felt that term meant 1 to several minutes and that a 4- to 6-week application waiting period was not immediate and beyond the congressional mandate.

As to accuracy, this same group felt that any system that denied 725,000 persons yearly the right to buy firearms was clearly not accurate and that if the Task Force found an accurate system impossible to devise, it should simply say so.

A Member of Congress felt the immediacy requirement precluded implementation of any of the prior-approval options.

The quality of felony conviction data

Numerous comments, from both individuals and groups, addressed the issue of the quality of felony conviction data. Some felt that nothing should be done until this problem was solved. Views expressed included the following:

Part VI. Appendix
Summary of comments on the Draft Report

Criminal records should be made current before any new laws are enacted.

Since data on noneligible purchasers are incomplete, the systems proposed would be ineffectual. The easy availability of guns through other sources would create contempt for the law.

Innocent people could be prevented from purchasing firearms, and felons could slip through a system based on these records.

Congress should focus on the real problem of improving the quality of criminal records systems at all levels of government.

Getting a national criminal history record system operational is imperative. Checking firearms purchasers without one is ludicrous and a mockery of justice.

The incompleteness of felony records is amazing.

The *Draft Report* is to be commended for discovering the appalling condition of criminal records. Law enforcement must be supported by upgrading criminal records systems with automation and with accurate, current, and uniform information.

Although it may be possible to create a computer file of felons, it will take not less than 10 years to do so. Better recordkeeping at local levels will be required.

A Member of Congress wrote that there was a desperate need for updating our data bases by including those not now automated (such as for persons born prior to 1929), identifying whether a conviction disqualifies one from a firearms purchase, and by systemizing State criminal reporting.

One State commented that incomplete criminal history data may pose problems for States with limited resources.

A civil liberties organization felt the Nation's criminal justice records are in a woefully inadequate state and strongly recommended the updating and organizing of all such records prior to implementing any of the *Draft Report*'s recommendations. Another civil liberties group stated that an individual's privacy rights are compromised by release of inaccurate criminal history records or arrest records without dispositions. And another civil liberties organization said that the greatest and most surprising value of the *Draft Report* is the light it sheds on the state of the U.S. criminal justice reporting system, and that these difficulties should be remedied before any proposal to identify felons who attempt to purchase firearms is considered.

A law enforcement group said that criminal records data bases must be improved — all of the options in the *Draft Report* depend on good data. Another said that the incompleteness of criminal history records is a critical hindrance. And another said that such incompleteness is a critical impediment and point-of-sale systems are subject to all the weaknesses of diverse and limited criminal history data bases.

One firearms group asserted that the poor quality of the criminal history data base would result in many false hits; that the quality of felony conviction data must be improved; and that it would support legislation to further this goal. Another firearms group suggested that of all criminal history records, only final disposition — conviction, acquittal, or restoration of rights — is pertinent.

Impediments to creating a perfect system

The three key elements recited in the *Draft Report* (a complete and accurate automated criminal history data base, positive identification, and an immediate linkage mechanism) were recognized by a number of comments. Some of the numerous citations of the problems of the first key element are recited in the previous section and will not be repeated here. One individual writer suggested that photographic identification (which, he said, was adequate for access to classified material) should be sufficient proof of identity for firearms purchasers. Biometric identification should not be required for firearms purchasers when it is not required in other sensitive situations, and photographic identification (such as drivers' licenses) are far less expensive.

A civil liberties group reiterated the Task Force's conclusion that a perfect system for immediately and accu-

rately identifying felons who attempt to purchase firearms is not feasible or practical in the near future. And a firearms group, likewise repeating this conclusion of the Task Force, noted that even so, a perfect system should be restricted to identification of felons, not nonfelon buyers.

Practical alternatives

One law enforcement organization, apparently the only responding group to do so, polled its members as to whether they favored a point-of-sale system or a prior-approval system. This poll found 49% favoring Option A, while 46% favored Option B. At the same time, 16% opposed Option A, and 20% opposed Option B.

A number of commenters suggested modifications to the various models presented, indicating that the original options, as modified, would be satisfactory to them.

Specific comments on Options A and B and their variations will be set forth under the following sections that deal with those options. Writers felt some of the following to be other practical alternatives, some of which are additional variations of Options A and B:

A law enforcement organization advocated a purchase certificate system for all buyers which would directly involve local police in preapproving firearms purchases. This would require the purchaser to apply for a certificate from local police, presenting valid and positive identification and paying an appropriate fee. If no disqualifying information were found, a firearms purchase certificate of limited duration would be issued, which would be presented along with supporting identification to a gun seller.

An individual writer suggested a system of bar coding on drivers' licenses, pilots' licenses, and boat licenses following a background check by police or the Coast Guard on location.

A State suggested that when a person was arrested for a felony, such information would be recorded on a FOID card, just as the data of a motor vehicle violation is recorded and recalled when a driver's license is renewed.

One firearms group proposed an instant ID where at the time of receiving a driver's license or State identification card, records would be checked by State police and an approval or disapproval for firearms purchases would be encoded on the license, visible only under ultraviolet light. At the point of sale, the dealer would simply read the license under a special light. Since the designation would not generally be visible, confidentiality would be preserved.

In several separate comments, individual writers suggested that no new Federal felon identification program be implemented. Some thought that the public funds that would have been used for this instead be employed for such things as building more prisons, sending lists of convicted felons to each gun dealer, or spending more on law enforcement and the judiciary.

As mentioned in the comments to the *Draft Report* Foreword, several writers asserted that a waiting or cooling-off period would be an appropriate control, either in lieu of or in combination with the *Draft Report* options.

Cost estimates

Several writers asserted that the costs of the proposed systems were too high. Many seemed concerned about the cost-effectiveness. Some seemed to feel that the benefits of a Federal program probably would be outweighed by the high costs to the public. One individual felt further research should be conducted. Another suggested that cost effectiveness estimates be addressed, such as whether background checks are an effective means of reducing violent crime compared to other approaches such as increased sentencing.

A Member of Congress, citing OMB Circular A-76 as well as these times of huge Federal deficits, stressed that any system be as cost-effective as possible.

Considering the state of the criminal justice identification system, it would be unreasonable to expect American taxpayers to pay the high costs estimated in the *Draft Report*, said a civil liberties organization.

A gun control group noted that felon identification systems in Florida and Virginia include user fees. It sug-

gested that start-up costs could come from a portion of the current tax on firearms.

A State patrol commissioner was concerned with the fact the *Draft Report* addressed only retail sales when elsewhere it cited a study stating that five out of six felons have acquired firearms other than from a retail outlet.

A Governor had serious concerns about initiating any of the options with the reported cost projections, adding that additional expenditures of State funds for new systems must be weighed against the existing cost of a viable and tested system long in place in his State.

One State public safety commissioner noted that costs would vary among States depending on their level of automation, their present gun control legislation, their demographics, and the ability of their personnel to absorb additional work. He also noted that the cost may pose problems for States with limited resources.

A Governor reported that due to the budget reductions in the Department of Public Safety in his State, it would be difficult to maintain criminal histories as thoroughly as would be necessary to process firearms applications.

A firearms organization noted that user fees of $7-9 for Option A and $27-32 for Option B would deter the purchase of inexpensive shotguns and rifles for young people and prevent the elderly living on fixed incomes from purchasing handguns for self-protection. These costs, it said, utterly lacked any acceptable cost-benefit ratio.

One writer noted that the cost estimates for the Virginia system are considerably lower than those suggested for Option A, as is the fee. Another questioned why the cost for setting up a Federal FOID card system was five to six times higher than the Illinois system, which he understood makes a small profit.

A consulting group comment and a gun control group comment both felt cost estimates were overstated because of the many hobbyist or other small volume BATF-licensed dealers.

Implementation issues

Of the four implementation issues spoken of in the *Draft Report*, no writer favored a self-standing Federal system, run entirely by Federal officials.

One individual writer believed that a federally mandated cooperative Federal-State system would require a minimum transition period of 2 years in States that have their own system. Another felt that if a system were to be federally mandated, the State would likely demand that the Congress pay for its full cost.

A gun control organization felt that a handgun purchase-certificate system should be a minimum Federal standard, which the States would be required to adopt if the *Draft Report*'s third implementation method were followed (a mandatory Federal standard which States could meet in different ways).

One individual, opting for the fourth plan (offering the States several different models for a cooperative Federal-State system, while making Federal resources and leadership available to assist the States), said it is best to let systems vary from State to State, since each State will know best what will work for it, and also since the States will apparently bear most of the cost.

In establishing minimum standards for the States, a State criminal justice division director urged that State and local efforts not be restricted where they provide greater protection to the public than that minimally required by Congress.

One of the responding Governors said he was in favor of the fourth method. And one of the firearms groups also favored this method, but suggested that input should be obtained from gun owners, licensees, and law enforcement personnel. This group said that the first plan was not viable since records are based on State laws and stored in State institutions; that the second method fails to take account of particular State needs; and that the third method was contrary to the spirit of federalism.

One civil liberties group contended that none of the methods should be implemented as they will undermine individual civil liberties and thwart the goals of

the McCollum amendment. It recommended that the Attorney General report that it is presently impossible to implement the McCollum amendment. The group felt that the floor debate on the McCollum amendment indicated that Congress recognized this possibility.

Legal and policy issues

Most of the comments on the seven illustrative legal and policy issues enumerated by the Task Force are presented elsewhere in this summary.

A civil liberties group cited a 1989 U.S. Supreme Court case, *U.S. Department of Justice* v. *Reporter's Committee for Freedom of the Press*, 109 S.Ct. 1468, 1485, for the proposition that an individual has a right to privacy regarding his or her criminal history records and the release of those records to a third party (such as a gun dealer) can reasonably be expected to invade that person's privacy.

A firearms group felt that any new legislation should include criminal penalties for "lawless government bureaucrats who prevent and impede legitimate firearm sales, misuse or disclose privacy information, use records to set up a de facto registration system, or otherwise infringe on the second amendment right to bear arms." It also suggested that retention of names should be made a violation of law with civil penalties for negligent retention and criminal penalties for willful retention.

A State Governor observed that Congress would need to enact a statute to motivate the States to provide for BATF terminal access to State criminal history files as a requisite for continued on-line access by the States to NCIC.

Solving the problem of felons acquiring firearms

One individual writer, repeating the *Draft Report*'s quotation of the study finding that about five-sixths of felons admitting ownership of firearms acquired them elsewhere than at retail, suggests that research should be conducted to determine the number of nonincarcerated felons, the percentage or number of these felons who are still active, and the percentage or number of them who are known to use firearms or who may desire a firearm for criminal purposes.

Another writer suggested that data be compiled on the illegal firearms market, while still another suggested a study on BATF effectiveness.

A civil liberties organization, reiterating the *Draft Report*'s observation that a particularly effective system may force even more felons to turn to the black market or to accomplices without criminal records for their weapons, felt that the potentially small gain of developing a system does not justify sweeping changes.

Another writer, citing the same study, believed that while an attempt to prevent retail sales of firearms to criminals and other ineligible person should be made, a system must take into account the inconvenience, expense and the burden to firearms retailers, legitimate purchasers, law enforcement agencies and other government functions.

Other individual writers expressed essentially the same concern. One said that even if a system were implemented, most felons would continue to acquire firearms through illegal means. Another expressed his view that the biggest fault with the entire idea (of identifying felons who attempt to purchase firearms) is that it will not reduce crime with firearms one iota.

Part II.
Options for a felon identification system

Section 1. Schematic overview

A Member of Congress asserted that the legislative intent of Sec. 6213 of the Act (the McCollum amendment) was for immediate (point-of-purchase) approval, and none of the preapproval options meets this congressional mandate. Likewise, he said, Congress did not intend a national waiting period nor the issuance of identification cards.

A firearms organization likewise asserted that "prior approval schemes" are not immediate and fall outside the legislative intent.

The same group felt that a required appearance at a law enforcement agency to receive a FOID card is a nonauthorized alternative for the surveillance of law abiding citizens. A toll-free number could be considered, but only when criminal records are accurate and up to date.

The same organization strongly believed that data sources could be used by law enforcement agencies to notify dealers of likely prohibited persons attempting to buy guns and also to identify felons buying on the black market. And in the area of decision organizations, it suggested that trained persons should interpret conviction data under the laws of each State.

Any appeal, it said, should be a de novo review by State or Federal courts with attorney fees awarded for the prevailing plaintiff.

Section 2. Point-of-sale approval systems

Option A: Telephone check by gun dealer with secondary verification

Of the many comments on Option A, some dealt with the specific topics covered by the *Draft Report*. Others introduced new topics or were more general in nature. This analysis will deal with the former first.

A firearms organization said that in a telephone check, only conviction-based indexes, not arrest-based indexes, can be used. It also noted that there is a danger of creating of a registration system resulting in a loss of privacy if the law enforcement agency retains the records of inquiries for the purpose of auditing dealers. Retention of names should be made a violation of law with civil penalties for negligent retention and criminal penalties for willful retention.

On the issue of secondary verification, the same organization felt that requiring a citizen with no known convictions to go to the police station and give his fingerprints would be a gross violation of privacy and civil liberties. It also observed that a certificate of purchase for no more than 1 year would require the purchaser to undergo the same degrading process year after year. Further, the data base would become a registry of gun owners.

On the topic of data sources, a State response observed that since a separate data base would apparently be used at the State level to maintain an applicant's certificate of purchase, there is a concern about subsequent arrests and convictions. Systematic purging would be required every 2 or 3 years.

A civil liberties organization was concerned over a link-up with the NCIC without providing protection for the privacy interests of prospective purchasers.

If gun dealers are to be subject to criminal penalties for false inquiries or unauthorized disclosures, a firearms group felt, then willfulness should be a required element of the offense.

Requiring fingerprints on BATF form 4473 is a violation of privacy and civil liberty, asserted a firearms group and the exercise of a constitutional right cannot be conditioned on making fingerprints available to police. Further, it said, any system where 50% of the cases receive false hits does not meet the congressional mandates of accuracy and immediacy.

As to the *Draft Report*'s suggestion that additional efforts to ensure positive identification could include the dealer rolling the print of the applicant's right index finger on the BATF form, one individual writer noted that it takes training to roll a fingerprint correctly and that a photograph of the instant-developing, forgery-

resistant type (such as used on driver's licenses) taken at the point of sale would be superior. A firearms group also felt adding a fingerprint to the BATF form was a bad idea, suggesting that handwriting analysis would be sufficient.

Another individual writer felt that most point-of-sale telephone checks will result in felons escaping identification and the occurrence of false hits on eligible purchasers.

A Governor observed that if Option A were adopted, his State's identification division would have to enter several thousand names in the index to update the system and that considerably more manpower would be needed for the name index file as well as the AIS-III index. Still, he preferred Option A over a prior-approval system.

A municipal police department felt a point-of-sale approval system would result in an estimated 33% increase in volume for that department.

A number of writers were concerned about cost. Cost was a major concern of the law enforcement organization that took the survey of its members (16% opposed Option A; 20% opposed Option B).

Commenting on some of the disadvantages mentioned in the *Draft Report*, several writers have reiterated the *Draft Report*'s observation that the validity of a telephone check is only as reliable as the purchaser's identification documents. One individual, who felt Option A was at best a mediocre system, suggested that it would allow an unscrupulous dealer to sell firearms to a felon through use of false identification. One of the State respondents made the same observation.

At least two States have agreed with the *Draft Report*'s observation that a major burden would be placed on the State repositories.

One individual stated that call-back security could be a problem for dealers at gun shows, for those with more than one store, or for those with call-back line breaks. He observed that call-back systems are sometimes not secure and a feature such as call forwarding could complicate security even more.

In response to the *Draft Report*'s mention of the disadvantage of occasional technical failure, one individual understood that under the new Virginia system, the dealer may proceed with a sale if the State does not respond to a dealer inquiry within a specified time. He believed a similar provision should appear in any Federal statute.

Several comments expressed concerns that a high percentage of false hits is an invasion of privacy. One suggested that defamation may also be a concern.

Of the suggested potential modifications, the one concerning possible relaxed point-of-sale procedures in some situations (as at gun shows and for low-volume dealers) led one Governor to report that numerous indictments were recently obtained by prosecutors in his State for the sale of guns by dealers who allegedly failed to demand presentation of the required State FOID cards.

A firearms organization suggested several potential modifications including: 1) required secondary verification only of persons whom the records show with disabling convictions, but who claim their identities are mistaken; 2) a mere hit on out-of-State records should never shift the burden on certifying qualifications to the applicant; limitation of secondary verification searches to the State repository of residence may be sufficiently effective and economical; 3) exemption of all .22 rimfire firearms; and 4) limited time period for verification, so that qualified purchasers be not unduly delayed, similar to the Virginia provision where a hit or computer breakdown allows delay for only 1 day.

In the category of general comments, a civil liberties group expressed its view that Option A seems the most cost-effective and would be acceptable to that organization if it can meet specified criteria: 1) nonabridgement of any constitutional rights; 2) destruction of records so that there can in no way be a national registry of firearms owners; 3) accuracy, simplicity, and reasonable fees; 4) costs falling within realistic resources and budget limitation of local, State, and Federal governments; and 5) effectiveness in preventing felons from obtaining firearms.

A Member of Congress felt that law enforcement agencies, not gun dealers, should access criminal records because of privacy concerns and also because those who are about to commit crimes or are mentally unstable might be deterred from buying a firearm.

A firearms group suggested that because of its expertise and prospective involvement in point-of-sale options, the firearms industry should participate in any further work of the Task Force. This same group is committed to the development and implementation of a point-of-sale approval system.

A consulting firm preferred Option A over Option B because the former is quick and puts minimum burdens on firearms purchasers, and the information necessary to do a point-of-sale approval is already required by the BATF forms. The comment added that Option A is feasible, whereas Option B depends on undeveloped technology, is too costly, and it will take years to get the bugs out of such a system.

However a Member of Congress believed point-of-sale systems will not work because the technology to make accurate, instant checks at the purchase site simply does not exist.

A law enforcement organization noted that Option A provides a background check prior to purchase, though there is no waiting period. It provides immediate information to the gun dealer and the least inconvenience to purchasers. However its reliability caused some members concern because of the responsibility it placed on gun dealers and the difficulty of verifying the identity of buyers.

Option A1: Terminal access by gun dealer to disqualifying information

Most comments on Option A1 felt it offered no particular advantages and would be far costlier. However, a consulting organization, which is in favor of point-of-sale approval concepts because they are quick and put minimum burdens on firearms purchasers, recommends a combination of Options A1 and A2. This company claims that it has already developed a system that incorporates both computer terminal access and touch-tone telephone access. The comment maintains this combination cuts the time for a check from 3 minutes using just a telephone to 30 seconds and that its system would be less expensive than the $36-44 million estimate given by the *Draft Report*.

Option A2: Touch-tone telephone access by gun dealer to disqualifying information

As with Option A1, most of the concern was about the higher cost and relatively little additional advantage. However, see the comment of a consulting firm under the previous section for a differing view.

Option A3: Live scan of fingerprints by gun dealer

As with the previous two high-technology options, concern by those who commented was centered on the high cost.

However, a Member of Congress suggested that fingerprint identification by gun dealers is a goal we can achieve. The technology now exists, and this is a rapidly improving science, he said.

Some civil liberties and firearms group responses asserted that the required fingerprints violate privacy right concepts; that persons should not be required to give fingerprints to exercise a constitutional right.

Option A4: Biometric identification

Reaction to Option A4 was more positive than to the other variations of Option A.

One firearms group suggested having a card to be read at the point of sale in a manner similar to the present system of validating credit card purchases. This system would need to include a method to ensure security against unauthorized access, economic feasibility, a method for identifying prospective purchasers, an accurate data base of felony convictions and other disqualifying factors, and an appeals system. It cautioned, however, that Americans are legitimately concerned that a screening system not result in a de facto registration of all firearms complete with a data base of all firearms owners. Issuance of a card on the Federal level would raise concern regarding the

infringement of second amendment rights; thus it would be more acceptable if cards — perhaps a "smart card" — were issued by States that could be used as a driver's license and for other purposes as well. Such issuance by the States would have to be federally mandated, and this group would support Federal legislation to this end.

A civil liberties group suggested that at the time of issuing a driver's license or State identification card, State police check records, and approval or disapproval for firearms purchases would be encoded, visible only under ultraviolet light. This card would be presented at the time of a firearms purchase and be read by the dealer. The costs would be low and privacy assured. No master list could be compiled. For a more positive identification check, a fingerprint could be placed on each State driver's license or identification card.

A law enforcement organization believed that Option A4 enhanced positive identification, but if implemented, the group suggested the biometric card should serve as a supplementary process rather than the primary and only means of identification.

As to fingerprints being required for the initial issuance of an owner's card with renewals based on name and date-of-birth search only, it was noted by a State Governor that such a system would work only if initial fingerprints were retained on file to ensure that any conviction data were properly identified to the card number assigned.

Section 3. Prior approval systems

Option B: Firearm Owner's Identification (FOID) card

One law enforcement group favored Option B as the most viable and least intrusive and burdensome for firearms purchasers and, it said, that option would offer the advantage of submitted fingerprints rather than the more inaccurate name check. Further, there would be adequate time to perform a complete record check and to interpret the criminal history record data. Also, it would afford the buyer who has encountered a false hit the opportunity to resolve the misinformation on a one-time basis as opposed to the time-consuming appeals system under Option A.

Another law enforcement group liked Option B because it offered fingerprint identification rather than the more problematic name check identification method. It also said that variations of Option B had been proven effective in several States, and it was compatible with possible future requirements for other disqualifications, such as illegal alien status.

One law enforcement group suggested that the Federal Government create from its existing resources a felon clearinghouse that would be charged with positively identifying felons from any jurisdiction and would also initiate a FOID system and actually issue the FOID cards. These would be "smart cards" but would be issued only to persons who are eligible to purchase firearms. They would be issued every 5 years, thus reducing the cost, which would be borne by the applicant.

One law enforcement group, preferring the more realistic fingerprint identification check, envisioned the process as taking 2 to 4 weeks, rather than 4 to 6 weeks as the *Draft Report* indicated.

A director of criminal justice of a State which has for many years had a prior-approval system analogous to Option B, strongly encouraged the Federal Government to follow this general model, but voiced a strenuous objection to any Federal requirement which would require the State to abandon its system to be replaced by one which would be more costly and at the same time afford an inadequate opportunity for State law enforcement agencies to conduct appropriate investigations into an applicant's overall fitness and eligibility to purchase a firearm under State law.

The Governor of Illinois, a State that has a preapproval system using a FOID card, reported that in 1988 2,470 individuals were denied a card as a consequence of felony convictions, and in the same year 779 cards were revoked as a result of felony convictions. He also noted that an advantage of a preapproval system is that it places the burden of operating costs on those

who desire to purchase firearms by imposing on them appropriate fees for operating costs.

Another Governor, however, was concerned at the initial start-up costs of Option B, which he felt would be very expensive for the State's repository, and he estimates it would increase the data there by 55%. This, he feared, would be so costly as to be prohibitive.

One civil liberties group suggested that for a more positive identification check, a fingerprint be placed on each State driver's license or identification card.

Most civil liberties groups, however, expressed concern with Option B. One found it unacceptable because it requires a large monetary investment, creates a bureaucratic nightmare for local law enforcement, requires keeping records on those who legitimately own firearms, and creates complications such as a 4- to 6-week waiting period for legitimate gun buyers. It asserted that a claimed advantage of Option B over A — that B would prevent false rejection based on name similarity — is illusory, because B requires all applicants to be investigated, not just the 6-8% wrongly accused of having a criminal history.

And another civil liberties group opposed a system that would require all individuals to possess a document indicating eligibility to purchase firearms. It also feared that a centralized data base of information on prospective firearms purchasers would be created.

A firearms organization stated that the FOID card concept violates the statutory directive calling for immediacy; that it is nothing less than a national registration scheme for nonfelons that forces citizens who have never committed a crime to appear at police stations to be fingerprinted and photographed. It added that almost all States have rejected the FOID card concept and that the States have no constitutional duty to administer and enforce such a scheme.

A Member of Congress, reviewing the statutory history of Sec. 6213, contended that the Congress in passing the amendment rejected any waiting period in favor of identifying felons attempting to purchase firearms at the location of gun dealers.

Another Member felt that prior approval systems are the correct approach and urges that such a system be recommended to the Congress.

A gun control group favored a variation of the prior approval system outlined in Option B for the purchase of handguns. It supported a certificate-of-purchase system where a prospective handgun purchaser would appear before the local police, would present valid photographic identification, and would complete a Federal form asserting no impediment to handgun ownership. The applicant would pay a user fee, be checked through available data bases, and if no disqualifying conviction were found, would be issued the certificate of purchase. At the time of purchase, the buyer would present the certificate to the dealer, who would then be required to verify the purchaser's identity and the certificate's validity by telephoning the local law enforcement agency.

Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer

The State patrol chief of one State preferred Option B1 as being the most effective method of fulfilling the requirements and intent of the proposed goals. He does, however, list some concerns about this option, such as its cost-effectiveness and the financial impact on small dealers. This option would appear to require use of the applicant's fingerprints in conjunction with an AFIS system, which would than have to be linked to an automated records data base to comply with the immediacy requirement.

A law enforcement organization preferred this option above all others. The writer of this comment felt that any felon attempting to purchase firearms will be identified. He saw no loopholes and believed that although the cost was higher, the lives saved would make it worthwhile.

Other comments objected to implementation of this option because of the higher cost and the invasion of privacy and traditional notions of civil liberties.

Option B2: Smart card containing disqualifying information

A law enforcement organization suggested creating a felon clearinghouse which would issue a FOID card in the form of a smart card, but unlike Option B2 it would only be issued to qualified applicants after clearance by the clearinghouse.

A firearms group stated that the concept of a smart card with positive and possibly biometric identifiers is one which merits further investigation. Its chief advantage is the elimination of forgery.

A State Governor was concerned about the high start-up costs of this option to his State's repository.

An individual advocated a system of placing a bar code on drivers' licenses which he thought would be less costly.

A civil liberties group suggested that for more positive identification a fingerprint could be placed on each State driver's license or identification card.

However, another civil libertics group asserted that the smart card option failed to meet the "compelling interest" test as laid down by the U.S. Supreme Court.

Another individual was concerned about forgery. He said that in the case of cryptographically based smart card technology using public key algorithms, a compromise of the master encrypt key by any of the State centers could jeopardize the entire system's credibility, since forgeries would be as good as originals in every respect.

A Member of Congress suggested that the smart card system may be constitutionally at-risk and programmatically deficient in numerous respects. Also, he said, the costs seem prohibitive and the potential to expand this system into a nationalized identification card has serious problems. He also found troubling the lack of correct information held on the smart card.

A civil liberties group opposed universal smart cards as being overbroad and invasive.

Section 4. Appeals procedures

A firearms group stressed that administrative appeal procedures must be quick and inexpensive. Any necessary judicial review must be de novo with attorney's fees awarded to a prevailing plaintiff. Further, it contended, appeal time should not be limited.

One writer said his State's appeal system often results in high legal costs to an applicant who must go through what he felt was a secretive and lengthy appeals process.

An individual asserted that an appeal procedure must be in place before any preapproval system is initiated.

A firearms group stressed that the right to a judicial appeal is guaranteed by the Due-Process Clauses of the Fifth and Fourteenth amendments.

Part III.
Legal and policy issues

Several groups took exception to the conclusion of SEARCH Group's study that there appear to be no constitutional impediments to the creation of felon identification systems. One firearms group asserted that requiring Americans to be fingerprinted and interviewed by the police merely to exercise their Second Amendment right to keep (and thus acquire) and bear arms is a constitutional infringement. This group criticized the Department of Justice for failing to discuss or even mention the second amendment, which failure, the group said, exhibits insensitivity by a department supposedly dedicated to the protection of the Constitution. The group also objected to the reliance of the Task Force on the SEARCH study.

Another civil liberties group emphatically disagreed with the conclusion that there appeared to be no constitutional impediments. Specifically, it questioned the constitutionality of the required fingerprinting provisions of the options.

An individual saw a potential conflict between the right of privacy and an infringement on second amendment rights; however, he suggested that constitutional tests might be met if the concept were enlarged to include other areas requiring background checks such as police or government workers, so that mere possession of an identity card would not automatically identify a firearms owner.

A civil liberties group was wary of the Task Force proposals as infringing on a law-abiding citizen's right to privacy, the right to the absence of unreasonable searches and seizures, and the right to keep and bear arms.

Another civil liberties group expressed its view that firearms licensure, regulation, and law enforcement responsibilities should remain within the purview of the States.

A Federal or State system; mandatory or voluntary?

Two law enforcement groups feel the implementation approach should be a federally mandated cooperative Federal-State system. An individual asserted that the existence of 20,000 State and local gun laws is a disgrace and recommended Federal preemption of all State and local gun laws.

Another individual felt it is best to let systems vary from State to State since the States know what will work best and apparently will bear most of the cost. He believed that a federally mandated system would require a transition period of at least 2 years in States that have their own systems.

One State response suggested that a Federal standard be established with Federal dollars to assist States in the implementation phase.

And the Governor of another State (who supports and whose State has a preapproval system) was convinced the decision should be left to the States for implementation and operation. He noted that in his State all criterion arrests are State reported but 27% of these arrests are not further reported to the FBI Identification Center.

One Governor said he will not support drastic measures at the Federal level to further limit the ownership of firearms, nor would he support a Federal effort to encumber State criminal justice information agencies with the responsibility of acting as a clearinghouse for the criminal history data necessary to support a Federal felon identification system as proposed.

Another State respondent noted that the start-up and operating costs are that State's most immediate concerns. The range of costs given in the *Draft Report* suggest an unbearable financial burden on State and local law enforcement agencies. More consideration needs to be given both to the ultimate costs and the sources of funding, he said.

Sources of funding for criminal history checks

As demonstrated in the previous two paragraphs, several of the State comments dealt with concerns about funding. One Governor, noting that cost is a major question, felt that large sums of Federal funds would be required to assist the States and also local governments.

Another State concern was that problems would be posed for States with limited resources.

Another Governor observed that one of the advantages of a preapproval system, such as the one his State has, is that it more easily places the burden of operating costs on those who desire to purchase firearms by imposing on them appropriate fees and operating costs.

A firearms group suggested that any system adopted should be funded by Federal and State appropriations with funds coming from a general appropriation or a special felon tax, which would require felons to pay for the system by extra fines and costs. This would be a true user fee, the group felt.

An individual agreed with the latter approach, saying that the felon, not the public nor the lawful gun owner, is responsible for society's having to go to such lengths. He suggested that the cost of the system be averaged over the prison population and added to each criminal's bill, just as restitution is added at the present time. He stressed that under no circumstances should the cost be passed on to the legitimate gun purchaser.

A Member of Congress believed that a system that has the least cost or no cost to dealers and buyers is preferable.

However a State director of criminal justice suggested that a user fee structure imposing a processing fee should be explored for funding the system rather than the use of tax dollars.

A civil liberties organization suggested that manufacturers, dealers, and purchasers should share in the costs, though they should be spared excessive fees. It added that costs should fall within budget limitations of local, State, and Federal governments; otherwise any system would be short-lived and inadequately enforced.

Release of criminal history information to gun dealers

A civil liberties group asserted that an individual has a right to privacy regarding his or her criminal history records and cited as authority a 1989 U.S. Supreme Court decision, *U.S. Department of Justice* v. *Reporter's Committee for Freedom of the Press*, 109 S. Ct. 1468, 1485. This comment reiterated the *Draft Report*'s observation that learning whether a prospective purchaser even had a criminal history record may be viewed as a release of criminal history records to non-law-enforcement personnel. Often, the group noted, the person would eventually be found not to have a criminal record, but merely the same name and date of birth as a felon, which could harm the person's reputation.

An individual noted that a possible solution to the potential for misuse of criminal history data would be a computer-generated postcard sent to prospective purchasers informing them that a check had been made. Dealers need a similar mechanism to ensure that an employee does not misuse the dealer's number for abusive purposes.

A Member of Congress said that law enforcement agencies, not gun dealers, should access criminal records, because of privacy concerns and also because those who are about to commit crimes or are mentally unstable might be deterred from purchasing firearms.

One firearms organization said it was not only in favor of, but committed to, an immediate point-of-purchase screening of prospective firearms purchasers. It recommended an electronic screening system in the form of a point-of-purchase computer terminal that could operate much like the current system for validation of credit cards. This would require a method such as an access code system to secure the system from being used for other than its intended purpose. The response to an inquiry should be only an approved or a disapproved notification without any further information about the reason.

Three individual commenters approved of this same system.

The issue of accuracy

The question of accuracy generated numerous comments, some of which are set forth above in Part I (The quality of felony conviction data) and elsewhere. Accuracy was an important concern of many responding to the *Draft Report*.

A firearms organization contended that a system that turns down 725,000 citizens annually, most of whom are not felons, is not accurate. Accurate records would aid the criminal justice system in many ways and would allow distribution of felon lists to dealers, it noted.

Creating a data base of firearm purchasers

Creating a data base of firearm purchasers would be dangerous to civil and individual rights, said one individual. A firearms group said that average Americans are capable of recognizing the proposals in the *Draft Report* for what they are: attempts to identify the type and location of firearms with a view toward confiscating some of them.

A law enforcement group observed that the "radical element" will view the use of a FOID card as the first step towards confiscation of guns from all citizens if the democratic system is overthrown.

A firearms group said that while it may be correct "in the narrow view" that legal research indicates no apparent conflict between the *Draft Report*'s options and State or Federal law, the data bases created could be expanded with abhorrent results. Such expansion coupled with potential creation of a data base of all firearms purchasers and the tracking of all firearms owners raises serious constitutional issues.

A civil liberties group asserted that no permanent records of firearms transactions should be kept, for such would be dangerous and subject to abuse.

An individual writer was concerned with the invasion of privacy involved in the *Draft Report*'s proposals. He does not believe that eligible purchasers' names will be deleted from the data base and asserts that his interest in guns is nobody else's business.

Another civil liberties organization opposed a system that would cause the creation of a centralized data base of information on prospective firearms purchasers.

Another firearms organization felt the proposals create a serious danger of a central registration system of firearms. The records of any approved persons, it says, should be destroyed by the close of the next business day.

Potential "tracking" of firearm purchasers

A civil liberties group opposed any system that would allow tracking of individuals through a firearms owners data base.

A firearms group contended that under the Draft Report's proposals, a large data base of citizens who want to purchase firearms would be created and would be used, among other ways, to interface with other government data bases such as IRS and Social Security.

Issuing documents authorizing firearm purchases

A number of commenters, especially those from firearms groups and civil liberties groups, objected to the prior approval systems as well as to the point-of-sale systems insofar as the latter require those who fail the test initially to obtain subsequent documentation. These comments generally pointed out that the required documentation unfairly singles out firearm purchasers because they must prove that they are not felons before otherwise exercising their rights to acquire firearms.

Also some of these commenters expressed concern that the two systems are in fact a method of building data bases containing the names of firearm owners that may later be used for investigative purposes or even to confiscate weapons in the event of civil disorder or the like.

The horrors that are inherent in such a national identification card, said one firearms group, are many. The infringement of civil liberties implicit in such proposals must be considered, warned a civil liberties group. Americans are legitimately concerned that a screening system not result in a de facto registration of all firearms, complete with a data base of all firearms owners, said another civil liberties group.

The use of biometric data

One civil liberties group opposed the routine fingerprinting of all prospective firearm purchasers as an intrusion into their privacy that is not justified by the small benefit that may result from the systems in the *Draft Report*.

A firearms organization asserted simply that Americans should not be routinely fingerprinted.

Part IV. Supplementary materials

Section 1. Relevant Federal statutes

A Member of Congress expressed his strong concern that the scope of the *Draft Report* "far exceeds" the clear intentions of Congress. He asserted that the floor debate made it clear that the purpose of Sec. 6213 of the Anti-Drug Abuse Act of 1988 was to establish an identification system at the point of purchase. It was not intended that this section authorize development of a prior approval system of any kind, he said.

Another Member said that he was convinced that the only truly accurate and effective way to keep felons from buying firearms from licensed dealers is to require that comprehensive background checks be undertaken on gun buyers by the FBI and local police prior to the purchase. Although under such a system gun buyers would be required to wait a short time to purchase firearms, he said he didn't believe such a system would seriously inconvenience law-abiding sportsmen and it would curtail crimes of passion and act as an enforcement mechanism to current law.

Section 2. Current practices: State practices regarding firearm sales

A firearms organization said it believed the new Virginia point-of-sale approval system is similar to Option A, but offered superior safeguards. This organization understands the Virginia system includes the following: 1) State police must respond during the dealer's call or by return call without delay; 2) if a disqualifying criminal record appears, the State must notify the dealer by the end of the next day or the sale may be made; 3) the dealer may make a sale after the end of the next business day in the event of electronic failure; and 4) State police may not maintain records of qualified purchasers for more than 30 days.

The Governor of Illinois, pointing out the results of his State's prior-approval system, noted that though it is not based on fingerprint data, 2,470 individuals were denied a FOID card in 1988 as a consequence of felony convictions and in the same year 779 cards were revoked as a result of felony convictions.

Oregon recently adopted a preclearance identification system that resembles Option B. It is due to take effect Jan. 1, 1990.

Section 4. Study of other persons ineligible to purchase firearms

A Member of Congress urged that any felon identification system be compatible with the system used to identify other prohibited persons such as those with mental disabilities or illegal aliens.

One law enforcement organization, favoring Option B, noted that this option would be compatible with possible future requirements for identifying those with other disqualifications.

An individual thought it would be extremely difficult to obtain data on persons with mental deficiencies, as their physicians are rightfully very protective of their files.

General comments

There were numerous comments on the thorough study which the Task Force undertook. Some examples include:

- The Attorney General and the Task Force staff are to be congratulated for dealing extraordinarily well with this extremely sensitive subject, said one firearms group.

- A gun control group said that the *Draft Report* is a significant step forward in the development of a responsible, effective, and comprehensive national gun policy. It was impressed by the depth and range of the options it contained and congratulated the Task Force for the considerable research and careful thought that obviously went into this study.

- Another commenter congratulated the Attorney General for his leadership on this important issue.

- A Member of Congress, complimenting the Task Force on the comprehensive and thorough nature of the study, said he felt that never before have we had such a thorough analysis of the possible systems for preventing felons from purchasing firearms.

- A law enforcement organization commended the Task Force for an admirable job on a difficult assignment.

- Several State Governors made comments along the same lines.

Other general comments included:

A State criminal justice division director, writing at the request of the State's Governor, said that it was gratifying that the Congress has decided to establish a Federal system for controlling access to firearms by convicted felons. For many years his State has had a preapproval system roughly similar to Option B, and he commented that it seems entirely appropriate to discontinue the practice which exists in some States of relying upon a prospective firearm purchaser's unverified

assertion that he or she has never been convicted of a crime.

A firearms group volunteered to help the Department reach the goal of keeping guns out of the hands of criminals without infringing on the right of law-abiding Americans to own firearms.

A number of writers asserted that gun ownership is a fundamental right that must not be infringed. One individual stated that the people have a right to rise up in arms and overthrow the government, and feared that the restriction of arms is an attempt to restrict the power of the people to change the government.

A State director of criminal justice observed that some of the options lack a mechanism to institute revocation proceedings upon a felony conviction.

One individual advocated giving military weapons to servicemen leaving their military service.

A civil liberties group suggested that the Attorney General should report to Congress that it is not possible to implement the McCollum amendment.

A writer believed the laws preventing felons from purchasing weapons are adequate, since they usually steal them.

A Governor commented that with sufficient resources, any of these options could be made operational.

A State director of law enforcement observed that it is obvious that some system should be put in place to aid society to keep guns out of the hands of criminals.

Notes